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SUPPLEMENT, 1912
TO
ANNOTATED
CONSOLIDATED LAWS
OF THE
STATE OF NEW YORK

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CONTAINING
AMENDMENTS TO CONSOLIDATED LAWS, CODE OF CIVIL PROCEDURE,
AND OTHER GENERAL STATUTES, ENACTED BY THE
LEGISLATURE OF 1912

AND ALSO
DECISIONS OF THE COURTS AND RULINGS OF THE ATTORNEY
GENERAL UNDER THE LAWS AND CONSTITUTION FROM
JULY 1, 1911, TO JUNE 1, 1912

(DECISIONS DOWN TO AND INCLUDING 224 U. S.; 194 FED. 928;
205 N. Y. 835; 149 APP. DIV. 128; 75 MISC. 576.)

EDITED BY
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AND FRANK B. GILBERT

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SEP 4 1912

CONSTITUTION.

DECISIONS, 1911-1912.

Art. I, § 1. Persons not to be disfranchised.

The power granted to the Legislature to prescribe the method of conducting elections cannot be so exercised as to disfranchise competent electors. The provision of section 12 of chapter 649 of the Laws of 1911, that the name of a person nominated by more than one political party shall be printed but once upon the ballot, and regulating in detail the method of carrying out such provision, is unconstitutional as unjustly discriminating between electors in the facility afforded them for casting their votes for the candidates of their choice. *Hopper v. Britt* (1911), 203 N. Y. 144, revg. 146 App. Div. 363, 131 N. Y. Supp. 135.

Section 123 of the Election Law relating to independent nominations is not in violation of this section. *Matter of Burke v. Terry* (1911), 203 N. Y. 293, affg. 146 App. Div. 520, 131 N. Y. Supp. 841.

Education Law, § 384 limiting eligibility to the office of district superintendent of schools is not violative of this section. *People ex rel. Pintler v. Transue* (1911), 74 Misc. 504, 132 N. Y. Supp. 497.

Art. I, § 2. Trial by jury.

The right of trial by jury, both in England and here, is embedded in the Constitution; and with us it is a right which in criminal cases cannot be waived. But the method of securing that right, in respect of selecting men who are deemed qualified to act as jurors, is one of legislative cognizance which is subject to any change that does not trench upon the fundamental right. *People v. Cosmo* (1912), 205 N. Y. 91.

Art. I, § 6. Bill of rights.

Compelling witness to testify against himself in criminal case.—Where a witness is compelled to answer questions which may tend to incriminate him by taking him before a justice of the Supreme Court who directs him to answer questions, his subsequent conviction is of doubtful validity. *People v. Reichman* (1911), 73 Misc. 212, 132 N. Y. Supp. 556.

A defendant in a criminal action may waive his constitutional rights, and whether or not there be such a waiver must be decided at the trial. *People v. Burke* (1911), 72 Misc. 336, 132 N. Y. Supp. 689.

Taking private property for public use.—The Tidal Water Way Company, incorporated by the Laws of 1894, chapter 719, and given power to condemn lands to build a canal connecting tidewaters and to condemn lands on either side of the canal for a distance of 1,000 feet, having contracted with another corporation to transfer all its rights over the canal when constructed so as to relieve it from any duty respecting the same, and the other corporation having in its turn agreed to convey the canal to the town of Hempstead, which has made no agreement to maintain it as a public waterway and has no statutory authority to construct or maintain canals or to exercise the power of eminent domain for that purpose, has departed from the specific use for which it was invested with power of eminent domain, and, therefore, has no right to condemn the lands as authorized by statute. Said act is un-

 Bill of rights, Art. I, § 6.

constitutional because it allows the taking of private property for a private use, in that it contains no provision that the buildings and warehouses which may be erected on lands condemned abutting upon the canal may be used by the public, even if it be assumed that the title was to remain in the condemnor. *Queens Terminal Co. v. Schmuck* (1911), 147 App. Div. 502, 132 N. Y. Supp. 159.

The provision in a municipal ordinance requiring one to obtain a permit and to pay a \$5 fee for opening city streets to lay pipes, etc., does not violate the provision of this section prohibiting the taking of property for public use without just compensation. *City of Buffalo v. Stevenson* (1911), 145 App. Div. 117, 129 N. Y. Supp. 125.

Compensation for lands taken for Barge Canal; rules applicable.—Just compensation in condemnation proceedings include the owner's expenses necessarily incurred for the protection of his interests in proceedings for the acquisition of his property, and the general rule applicable to legal actions and proceedings that costs and disbursements are not recoverable unless allowed by statute is not applicable to proceedings taken under the power of eminent domain. The expense of procuring an abstract of title is one item of such necessary expenses, and they also include the expense of printing the claim and of furnishing blue prints of the appropriation maps in accordance with the requirement of the Court of Claims.

The just compensation which the statute requires to be made to one whose lands are taken for a public use is to be measured by the market value of the property taken where the whole of the property is taken and by the difference in the market value of the premises before and after the appropriation, where a part only of the property is taken, except where benefits are involved, when owners must be awarded at least the market value of the lands taken.

Where, by the taking of part of one's land for the Barge canal, the balance is cut off from access to a canal which was previously enjoyed, the value of the part left must be fixed by reference to the condition in which it will be left after the appropriation with the prospect of securing a new right of way and constructing a new dock and using the new canal with any advantages or disadvantages that may result to the premises from the improvement.

In such a case, the claimants are entitled to have their premises valued before the appropriation by reference to the condition in which they were at that time, with the use of the dock and the old canal; and its market value must be fixed without regard to the prospect of the construction of a new canal.

In fixing the market value there should also be considered the fact that there was a dock maintained with the approval of the state and used in connection with the conduct of the enterprises in which the claimants were engaged, though the maintenance of such dock might at any time be terminated.

In fixing the value of the remainder of the premises not taken the prospect of using and building a suitable dock should be taken into account.

As a general rule the value of lands cannot be estimated by the profits of the business carried on upon them, yet those whose lands are taken for a public use are entitled to have the facts in relation to their business submitted in evidence as bearing upon the market value of their property; but whether or not profits should be considered depends upon the nature of the premises taken.

Where the personal skill, experience and efforts of the owner play too prominent a part, the profits realized from the business conducted upon real property constitute but little aid in determining the value of the property; but, where the earnings depend chiefly upon the location, soil or character of the property itself, the profits derived from it may furnish reliable evidence of its value. *Brainerd v. State of New York* (1911), 74 Misc. 100, 131 N. Y. Supp. 221.

Costs in condemnation proceedings.—Where the owners of several parcels of land are made parties to a single condemnation proceeding and the question at issue

Election laws, Art. I, §§ 7, 8, 18; Art. II, §§ 1, 4.

is the amount of compensation to be made, the court has power to award a bill of costs to the owners of each separate parcel. *County of Westchester v. Wakefield Park R. Co.* (1911), 147 App. Div. 655.

See generally. *Matter of Simmons* (1911), 144 App. Div. 255, 128 N. Y. Supp. 1021.

Art. I, § 7. Compensation for taking private property.

See *Ascher v. South Shore Traction Co.* (1911), 144 App. Div. 234, 128 N. Y. Supp. 1041.

Art. I, § 8. Freedom of speech and press; criminal prosecutions for libel.

Freedom of the press.—The expulsion of a member of an incorporated social organization for publishing an article in a periodical expressing a contemptuous opinion of the members of the theatrical profession, some of whom belong to said organization, is in derogation of his constitutional right to freely speak, write and publish his sentiments on all subjects. *Matter of Barry v. The Players* (1911), 147 App. Div. 704, revg. 73 Misc. 10, 130 N. Y. Supp. 701, *affd.* 204 N. Y.

Art. I, § 18. Damages for injuries causing death.

Power to regulate employees of common carriers engaged in interstate commerce.—In adopting the Federal Constitution the state delegated to Congress the power to regulate interstate commerce, and it may be conceded that with that power it may enact regulations for the control of common carriers and their employees with reference to hours of labor and safety appliances, and give a right of action to employees suffering injury through the negligence of such carriers. (*Employers' Liability Cases*, 207 U. S. 463.) But the power to regulate interstate commerce must end somewhere, and, so far as employees of common carriers engaged in interstate commerce are concerned, it appears that it must end with the death of the employee. When that event occurs all of the statutes with reference to safety appliances, hours of labor or rights of action for injuries received, become of no effect, and his estate, whatever it may be, passes to legatees and devisees, or to his widow, his heirs at law, and next of kin. *Matter of Taylor* (1912), 204 N. Y. 135, 140.

Art. II, § 1. Qualification of voters.

Section 331 of the Election Law as amended by L. 1911, chap. 649, violates this section. *Matter of Hopper v. Britt* (1911), 203 N. Y. 144, revg. 146 App. Div. 363, 367, 131 N. Y. Supp. 135.

Art. II, § 4. Registration and election laws to be passed.

Personal registration of voters in rural districts.—The provision of this section that voters residing in rural districts shall not be required to apply in person at the first meeting of the officers having charge of the registration of voters necessarily implies that such voters may be registered at that meeting without applying. *Fraser v. Brown* (1911), 203 N. Y. 136.

Election Law, § 159.—Chapter 649 of the Laws of 1911, amending section 159 of the Election Law by requiring the personal attendance of electors at the first meeting for registration in any election district wholly outside of a city or a village having 5,000 inhabitants or more, violates the express provisions of this section, and such provision is so connected with the remainder which requires similar personal application on other registration days that it is impossible to suppose the Legislature would have passed the one without the other and for that reason the entire section is invalidated. *Matter of Danniels* (1911), 74 Misc. 485.

Private and local bills, Art. II, § 6; Art. III, §§ 5, 8, 16, 18, 21.

Art. II, § 6. Registration and election boards to be bi-partisan, except at town and village elections.

Application.—This section has no relation to boards of election created for the purpose of performing in large cities duties, with some additions, which are generally imposed upon county clerks and similar officers. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, 129 N. Y. Supp. 280.

Art. III, § 1. Legislative powers.

See *Betts v. City of New York* (1911), 73 Misc. 503.

Art. III, § 5. Apportionment of assemblymen; creation of assembly districts.

The word "review" as used in this section does not authorize the court to decide the constitutionality of an apportionment as an abstract or academic question, but only confers upon it the exercise of regular judicial power in some known judicial proceeding. Constitutionality cannot be determined on an order to show cause. *Matter of Reynolds* (1911), 144 App. Div. 458, 129 N. Y. Supp. 629.

Art. III, § 8. Persons disqualified from being members.

City officers.—Members of the board of education of the city of New York are not city officers within the meaning of the Constitution. *Rept. of Atty. Genl.*, Mch. 15, 1912.

Art. III, § 16. Private and local bills; titles.

"When the subject is expressed, all matters fairly and reasonably connected with it, and all measures which will or may facilitate its accomplishment, are proper to be incorporated in the act and are germane to the title." *Economic Power & Construction Co. v. City of Buffalo* (1909), 195 N. Y. 236; *Queens Terminal Co. v. Schmuck* (1911), 147 App. Div. 502, 132 N. Y. Supp. 159.

Art. III, § 18. Private and local bills, when not to be passed.

The adoption by the constitution of counties, towns, cities and villages as the civil divisions is equivalent to a direct prohibition against the creation of other civil divisions vested with similar powers. *People ex rel. Hon Yost v. Becker* (1911), 203 N. Y. 201.

Exclusive privilege.—With reference to dog license is constitutional; such statute empowering a society to keep dogs without paying any license fee while every other citizen is obliged to pay such fee, does not grant an exclusive privilege. *People ex rel. Westry v. Delany* (1911), 73 Misc. 5.

Art. III, § 21. Appropriation bills.

Power of Legislature to make appropriations.—Under the above provision of the Constitution the Legislature alone has the power to decide under what conditions and for what purposes moneys belonging to the state shall be paid out of the state treasury. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 630.

Must be appropriation.—A resolution, passed by the trustees of the New York State School of Agriculture, providing for the payment of damages by the state for failure to pay promptly the agreed price of land purchased, is unauthorized and invalid, where there has been no appropriation by the state. *Rept. of Atty. Genl.*, Feb. 21, 1912.

License fees collected, pursuant to § 156-a of the Labor Law, from immigrant lodging places should only be paid out after an appropriation definite in amount. *Rept. of Atty. Genl.*, Jan. 3, 1912.

Civil service, etc., Art. III, §§ 22, 28, 29; Art. IV, § 9; Art. V, § 9.

Gift a gratuity from public funds.—L. 1905, chap. 582, awarding damages to land-owners caused by the construction of a bridge, is not unconstitutional as making a gift or gratuity from public funds. *People ex rel. Hallock v. Hennessy* (1911), 146 App. Div. 440, 131 N. Y. Supp. 327.

Art. III, § 22. Restrictions as to provisions in the appropriation or supply bills.

See *Betts v. City of New York* (1911), 73 Misc. 503, 132 N. Y. Supp. 448.

Art. III, § 28. Extra compensation to officers.

An additional allowance for clerk hire, during the term of a county treasurer, necessarily increases his compensation and is unauthorized. *Rept. of Atty. Genl.*, Mch. 7, 1912.

Art. III, § 29. Prison labor.

The labor of convicts in state prisons may be legally employed in the propagation of trees for the use of the Conservation Commission in the reforestation of state lands. Trees thus raised may also be disposed of for the reforestation of private lands. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 649.

Art. IV, § 9. Bills to be presented to governor; approval; passage of bill by legislature if not approved.

Effect of temporary adjournment upon bills in the hands of the Governor.—The adjournment referred to in this section is the final adjournment at the close of the session and not an adjournment from time to time or to a fixed date. Under the latter adjournments the Legislature is still in existence in contemplation of law, and bills sent to the Governor may be returned to the Legislature at any time prior to its final adjournment. Should he not do so, such bills become laws after the expiration of ten days from the time they are received by the Governor. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 593.

Art. V, § 9. Civil service.

In enforcing the provisions of this section, the duty rests primarily on the executive branch of the government to determine in what cases it is practicable to ascertain the qualifications of candidates by competitive examination. *People ex rel. Merritt v. Kraft* (1911), 145 App. Div. 662, 130 N. Y. Supp. 363.

Considerable discretion rests in the Legislature in determining whether it is practicable to test by examination the fitness of an applicant for a position created by it. *Simons v. McGuire* (1911), 145 App. Div. 471, 130 N. Y. Supp. 306.

The position of special agent in the State Department of Excise is not of such a confidential nature as to make it impracticable to fill it by appointment from an eligible list made as a result of competitive examinations, but lies in that field where the action of the State Civil Service Commission in placing it either in the competitive or exempt class should be final. *Matter of Farley* (1911), 73 Misc. 555, 131 N. Y. Supp. 353, *affd.* 147 App. Div. 929, and *revd.* in 204 N. Y. (Mem.).

See generally. *Matter of Simons v. McGuire* (1912), 204 N. Y. 253.

Art. VI, § 3. Judge or justice not to sit in review; testimony in equity cases.

Since this provision requires the testimony in equity cases to be taken in like manner as in cases at law, the court has no jurisdiction to restore on petition the lien of mortgages which are alleged to have been satisfied by ignorance and mistake. *Matter of Coss* (1911), 144 App. Div. 832, 129 N. Y. Supp. 425.

Art. VI, §§ 11, 17; Art. VII, §§ 4, 7, 12; Art. VIII, §§ 9, 10; Art. X, § 2.

Art. VI, § 11. Removal of judges.

Amendment of 1911 to § 263 of the Code of Civil Procedure, abolishing the Court of Claims and re-establishing the Board of Claims, is not a violation of this section. *People ex rel. Swift v. Luce* (1912), 204 N. Y. 478.

Art. VI, § 17. Justices of peace; district court justices.

District Court justices.—By virtue of this section the Legislature may determine whether or not cities shall have justices of the peace or District Court justices, and if they determine in favor of the existence of these judicial officers, the offices must be filled by election. The justices of the Municipal Court of the city of New York are District Court justices within the meaning of the Constitution. *Matter of Markland* (1911), 146 App. Div. 350, 131 N. Y. Supp. 364, *affd.* 203 N. Y. 158.

Art. VII, § 4. Limitation of legislative power to create debts.

Creation of state debt.—A state debt may be created for the construction of highways under the provisions of this section, notwithstanding the addition of section 12 to this article in 1905. *Rept. of Atty. Genl.*, Feb. 9, 1912.

Art. VII, § 7. Forest preserve.

The Lake George Battle Ground Park having been acquired by the state under a law authorizing its purchase for a definite and proper governmental purpose inconsistent with its use as wild forest land, the provisions of the law defining the forest preserve should not be held to apply to it so as to bring it within the constitutional provision relating to the forest preserve, and it may be improved as a park. *Rept. of Atty. Genl.*, Feb. 21, 1912.

Art. VII, § 12. Improvement of highways.

A county cannot maintain an action to have a statute appropriating moneys for the construction of state highways declared unconstitutional. *County of Albany v. Hooker* (1912), 204 N. Y. 1.

Art. VIII, § 9. Credit or money of the State not to be given.

Application.—The provision that "Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking," does not prevent the Legislature from recognizing claims founded on equity and justice, though such claims are not such as could have been enforced in a court of law if the state had not been immune from suit. *Lehigh Valley R. Co. v. Canal Board* (1912), 204 N. Y. 471, *modfg.* 146 App. Div. 151, 130 N. Y. Supp. 978.

Barge canal act.—The statute (L. 1903, chap. 147) providing for the construction of the barge canal is not unconstitutional, because the state therein assumed for itself the cost and expense of raising and rebuilding bridges previously erected by railroad corporations over streams being canalized for the barge canal, or in building new bridges in place thereof, where such changes are necessitated by the improvements made in such streams for the barge canal. *Lehigh Valley R. Co. v. Canal Board* (1912), 204 N. Y. 471, *modfg.* 146 App. Div. 151, 130 N. Y. Supp. 978.

Art. VIII, § 10. Limitation of local indebtedness.

See *Admiral Realty Co. v. Gaynor* (1911), 147 App. Div. 719, 722.

Art. X, § 2. Appointment or election of officers not provided by constitution.

Application.—The provision that "all officers, whose offices may hereafter be created by law, shall be elected * * *, or appointed, as the Legislature may

Art. X, § 5; Art. XII, § 3; Art. XIII, §§ 1, 5.

direct" contemplates that whoever is vested with the appointing power is to exercise discretion in making a choice. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, 129 N. Y. Supp. 280.

Education Law, § 384, relative to the appointment of district superintendents of schools, does not violate this section. *People ex rel. Pintler v. Transue* (1911), 74 Misc. 504, 132 N. Y. Supp. 497.

Art. X, § 5. Vacancies in office, how filled.

Application.—Section 1357 of the charter of the city of New York, as amended by Laws of 1907, chap. 603, § 3, providing that vacancies in the office of justice of the Municipal Court of the city of New York, created otherwise than by expiration of term, shall be filled at the next general election in an odd numbered year, happening not less than three months after such vacancy occurs, for the full term, and further allowing the mayor to fill the vacancy by appointment in the interim, is unconstitutional and void, in so far as it may postpone the election of such justice contrary to the provision of the Constitution. *Matter of Markland* (1911), 146 App. Div. 351, 131 N. Y. Supp. 364, *affd.* 203 N. Y. 158.

Art. XII, § 3. Election of city officers, when to be held.

The purpose of this section is to separate the election of city officers from that of state officers so that they will not occur in the same year. *Markland v. Scully*, (1911), 203 N. Y. 158, *affg.* 146 App. Div. 351, 131 N. Y. Supp. 364.

Art. XIII, § 1. Oath of office.

Oath by condemnation commissioners.—An award should not be invalidated because the commissioners, in taking their oath, merely took that prescribed in the Constitution to discharge the duties of the office of commissioner in the above-entitled proceeding to the best of their ability, instead of swearing in addition, as required by the Grade Crossing Act (L. 1888, ch. 345, § 12, as am'd by L. 1890, ch. 255, § 9), to ascertain and report the just compensation to be paid to owners and parties injured. *Matter of Grade Crossing Commissioners* (1911), 148 App. Div. 412.

Education Law, § 384 does not contravene this section. *People ex rel. Pintler v. Transue* (1911), 74 Misc. 504, 132 N. Y. Supp. 497.

Art. XIII, § 5. Free passes, franking privileges, etc., not to be received by public officers; penalty.

Use of pass by employee.—It is not a violation of the Constitution for an employee of a railroad or express company to receive or use a pass issued by a railroad company as part compensation for the services of such employee, or to be used by him in his employment notwithstanding that such employee is a public officer. *Rept. of Atty. Genl.*, Mch. 22, 1912.

1912
SUPPLEMENT
TO THE
CONSOLIDATED LAWS OF NEW YORK

ADMINISTRATORS.

See *Executors and Administrators.*

ADVERTISEMENTS.

Untrue and misleading; Penal L., § 421.

AGRICULTURAL LAW.

(L. 1909, ch. 9.)

§ 32. Prohibiting the sale of adulterated milk, etc.

Delivery of adulterated milk for sale in foreign state.—One who delivers adulterated milk to a railroad station in this state under a contract made here, whereby the title vested in the vendees upon delivery at the shipping point and whereby they were to pay freight, is liable for the penalty for a violation of this section, although it was agreed between the parties that the milk was to be sold only in New Jersey and it complied with the standard of purity in that state. As the statute provides that "Any person delivering milk to any * * * railway station to be shipped to any city * * * shall be deemed to expose or offer the same for sale," the question as to whether it would be a violation of law for a resident of this state to agree with a resident of another state to deliver and sell to him in that state adulterated milk produced here, does not arise. *People v. Abramson* (1911), 147 App. Div. 491, 131 N. Y. Supp. 798.

§ 37. Regulations in regard to condensed milk.

Sale in foreign state.—This section does not defeat an action to recover for condensed skim milk sold and delivered in another state. *Boston Dairy Co. v. Jones Corp.* (1911), 72 Misc. 17, 129 N. Y. Supp. 70.

§ 38. Manufacture and sale of imitation butter.

Sale of oleomargarine.—The statute only prohibits the sale of oleomargarine which by artificial or deceptive means is made to resemble butter in appearance. *People v. Guiton* (1911), 73 Misc. 409, 133 N. Y. Supp. 353.

§ 41. Coloring matter, etc.

Breaking of seal.—A person is liable for the penalty prescribed by this section forbidding the sale of oleomargarine unless at the time of sale the seal required

§§ 52, 70, 91, 96, 97, 106.

Cider vinegar.

L. 1912, ch. 26.

by the statute is unbroken, if the band to which the seal was attached was broken at the time of sale, even though the seal itself was intact. *People v. Fichten* (1911), 146 App. Div. 307, 130 N. Y. Supp. 704.

§ 52. Penalties.

A cumulative recovery for violations of a statute will be allowed where the legislative intent is clearly expressed. Where the statute provides that "the sale of each one of several packages shall constitute a separate violation," and imposes a penalty for each violation, a separate penalty may be recovered for each can of adulterated milk in the shipment. *People v. Abramson* (1911), 147 App. Div. 491, 131 N. Y. Supp. 798.

§ 70. Definition of cider vinegar and adulterated vinegar.—The term "cider vinegar" as used herein shall be construed to mean vinegar made exclusively from pure apple juice. All vinegar which contains any proportion of lead, copper, sulphuric acid or other ingredients injurious to health, or any artificial coloring matter, or which has not an acidity equivalent to the presence of at least four per centum, by weight, of absolute acetic acid, or cider vinegar which has less than such an amount of acidity, or less than two per centum of cider vinegar solids shall be deemed adulterated. (*Amended by L. 1912, ch. 26, in effect Mch. 6, 1912.*)

§ 91. Commissioner to issue notice.

Designation of newspapers in which notice of existence of infectious diseases is to be published and the manner in which it is to be posted may be made verbally. *People v. Bellinger* (1911), 145 App. Div. 141, 129 N. Y. Supp. 92.

A dog is not secluded, within the meaning of this section, when he is permitted to be on the streets, even though led by a leash. In order to seclude an animal, it is necessary to confine it within either a building or an inclosed yard, so that it cannot go upon the public highway. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 654.

§ 96. Regulations, the enforcement thereof and expenses incurred by sheriff.

Authority of commissioner and employees to carry weapons.—The Commissioner of Agriculture, his appointees and employees are permitted to carry dangerous or deadly weapons in any public place, at any time, without a written license therefor when they are engaged in the duty of enforcing the provisions of article 5 of chapter 9 of the Laws of 1909, together with the various acts amendatory thereof and supplemental thereto. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 631.

§ 97. Fines and penalties.

Publication and posting of the notice of infectious diseases need not be shown in an action to recover the penalty prescribed by this section. *People v. Bellinger* (1911), 145 App. Div. 141, 129 N. Y. Supp. 92.

§ 106. Shipping veal.

The execution of the right of seizure under this section must be within the letter of the law. No discretion is permitted. There is no authority for the seizure of a calf which is actually over four weeks of age simply because it is immature, has flabby and stringy flesh, if it is not diseased so as to be dangerous to the health of persons eating it. Where calves under the age of four weeks were originally shipped with their dams to a stock yard, were separated from their mothers and

L. 1912, ch. 277.

Concentrated commercial feeding stuffs.

§§ 160, 200, 201.

herded in a pen with other calves intended for sale, they were "apparently exposed for sale" within the meaning of this section. *Williams v. Rivenburg* (1911), 145 App. Div. 93, 129 N. Y. Supp. 473.

§ 160. Term "concentrated commercial feeding stuffs" defined.—The term "concentrated commercial feeding stuffs" as used in this article, shall include linseed meals, cotton seed meals, pea meals, bean meals, peanut meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried distiller's grains, dried brewer's grains, malt sprouts, except as hereinafter provided, hominy feeds, cerealine feeds, rice meals, dried beet refuse, oat feeds, corn and oatchops, corn and cob meal, ground beef or fish scraps, meat meals, meat and bone meals mixed, dried blood, mixed feeds, clover meals, alfalfa feeds and meals, compounded feeds, condimental stock and poultry foods, proprietary or trade-marked stock and poultry foods, and all other materials of similar nature; but shall not include hays and straws, the whole seeds nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, corn, buckwheat and broom corn. Neither shall it include wheat, rye and buckwheat brans or middlings, not mixed with other substances, but sold separately, as distinct articles of commerce, nor pure grains ground together, nor corn meal and wheat bran mixed together, when sold as such by the manufacturer at retail, nor malt sprouts, when sold as such by the maltster at retail, nor wheat bran and middlings mixed together not mixed with any other substances and known in the trade as "mixed feed," nor ground or cracked bone not mixed with any other substance, nor shall it include poultry foods consisting of whole or whole and cracked grains and grit mixed together when all the ingredients may be identified by the naked eye. (*Amended by L. 1909, ch. 317, L. 1910, ch. 436 and L. 1912, ch. 277, in effect Jan. 1, 1913.*)

§ 200. Prohibition as to adulterated or misbranded food.

A sale of a compound as a substitute for lard, in a wrapper which bore no label, brand or tag showing what it was, is a violation of the statute, though it was not disputed that the box or tub from which the article sold was taken was plainly and properly labeled and defendant's clerk who made the sale testified that he sold the article as compound and not as lard. *People v. Finch* (1911), 74 Misc. 575.

A sale of "O'Donohue's Fifth Avenue Salad Dressing" in a bottle, the label thereon not stating the ingredients therein, does not violate the Agricultural Law in the absence of proof that the article sold is an imitation or injurious to the public health. To bring a salad dressing within the provisions of the Agricultural Law requiring a statement of its ingredients to be on the label, the burden of proof is on the plaintiff to show that there is some standard merchantable salad dressing and that the article sold is not such but a mere imitation or injurious to the public health. *People v. Henderson* (1911), 74 Misc. 575.

§ 201. Definition of adulterated or misbranded food.

When a harmless article is sold under an arbitrary name and put up with labels or in packages in such a way as to make no misrepresentations, such an article is sold under "its own distinctive name" and comes within the exception stated in this section. Thus, the R. T. French Company, of Rochester, N. Y., may use the name

§§ 263, 310.

Promotion of agriculture.

L. 1912, ch. 73.

"Delliket" on the label of a table oil without being required to place on the label the ingredients of the article. Rept. of Atty. Genl. (1911), Vol. 2, p. 619.

§ 263. Barrels; apples, pears and quinces.—(*Repealed by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 310. Receipt and apportionment of moneys for the promotion of agriculture.—All the moneys already appropriated, or hereafter appropriated, for the promotion of agriculture in any one year, and all the revenues which have been, or shall be received by the comptroller, and all the moneys received by him from the tax collected from racing associations pursuant to article twenty of the membership corporations law, or hereafter otherwise collected from racing associations, corporations or clubs, shall constitute a fund, which shall be annually disbursed on behalf of the state for the promotion of agriculture and domestic arts, for the promotion of education along agricultural lines and for the promotion of the improvement of the breeding of cattle, sheep, horses and other domestic animals at the various fairs throughout the state, and shall be apportioned and distributed as hereinafter prescribed, among all the various county agricultural societies, the American institute of the city of New York, and among the other various town or other agricultural societies, or agricultural fair associations, or agricultural expositions, or agricultural clubs which have received moneys from the state and disbursed moneys for the state for such promotion, during either one of the three years, nineteen hundred and five, nineteen hundred and six, or nineteen hundred and seven, under and by virtue of section eighty-eight or eighty-nine of the agricultural law as it then existed. Such apportionment and distribution shall be made by the commissioner of agriculture in the following manner: Of such moneys already appropriated, or hereafter appropriated, there shall be apportioned and distributed to such county agricultural societies, American institute of the city of New York, and such various town or other agricultural societies, or agricultural clubs, or agricultural fair associations, or agricultural expositions, hereinbefore mentioned, in proportion to the actual premiums paid during the previous year by such agricultural societies, agricultural fair associations, agricultural expositions, agricultural club, and the American institute of the city of New York, exclusive of the premiums paid for trials and tests of speed, skill and endurance of man or beast. No such American institute of the city of New York, or such county agricultural society, or such town or other agricultural society, or such agricultural fair association, or such agricultural exposition, or such agricultural club shall receive any more moneys under the provisions of this article in any one year, than it actually paid out in premiums the next preceding year, exclusive of the premiums paid for trials, or tests of speed, skill or endurance of man or beast, and in no event shall any such American institute of the city of New York, or such county agricultural society, or such town or other agricultural society, or such agricultural fair association, or such agricul-

tural exposition, or such agricultural club receive under the provisions of this article, in any one year for premiums hereafter to be paid by any society, association, club or exposition, any sums of money exceeding four thousand dollars. Any such county agricultural society, town or other agricultural society, or agricultural club or fair association, or agricultural exposition, organized under the laws of the state of New York, which shall fail or neglect to hold an annual fair, and file its annual report as provided by this article, with the commissioner of agriculture, as herein provided, for two consecutive years, shall forfeit all of its chartered rights, including any privileges or moneys it might thereafter otherwise be entitled to under the provisions of this article. Except that where the lands or property of any such agricultural society or association have been or may hereafter be taken or appropriated by the state of New York for use in connection with the construction of the barge canal, no such society or association whose lands or property has been or may be so taken or appropriated shall forfeit any of its rights or privileges, or any of the moneys it might otherwise be entitled to under the provisions of this article, unless such society or association shall fail or neglect to hold an annual fair and file its annual report as provided by this article for five consecutive years. All agricultural clubs, societies, agricultural fair associations, agricultural expositions, or the American institute of the city of New York, entitled to receive any portion of the moneys appropriated by the state, must hereafter on or before the fifteenth day of December in each year, file a statement, duly verified by the president and treasurer or secretary, showing the amount of premiums paid at the last annual fair, exclusive of premiums paid for trials or tests of speed, skill or endurance of man or beast, which statement together with vouchers for moneys paid as premiums shall be filed in the office of the commissioner of agriculture, otherwise such society, fair association, exposition, club, or the American institute of the city of New York, shall forfeit its right to participate in the distribution of such moneys for premiums paid for such year. No other agricultural society, now or hereafter organized which is not entitled to receive moneys under this section, except a county agricultural society, shall be entitled to receive any moneys under the provisions of this article, until it shall have first filed annual reports in the office of the commissioner of agriculture, as hereinbefore provided, and paid in actual cash premiums for agricultural, mechanical and domestic products at least fifteen hundred dollars a year for three successive years, exclusive of the premiums paid for trials, or tests of speed, skill or endurance of man or beast. When any such other agricultural society has filed such annual reports and paid such premiums for three successive years as herein provided and to the satisfaction of the commissioner of agriculture, then the said commissioner of agriculture may thereafter allow such society to draw moneys under and by virtue of the provisions of this article. All such county agricultural societies, town or other agricultural societies, or fair associations, or agricultural expositions or

ganized under the laws of the state of New York which have received moneys from the state for premiums paid for the promotion of agriculture and domestic arts, for the promotion of education along agricultural lines, or for the promotion of the improvement of the breeding of cattle, sheep, horses and other domestic animals, shall be deemed as agents for the state in disbursing such moneys and shall be entitled to be reimbursed for such moneys paid as provided in this article, from an annual appropriation which shall not be less than two hundred and fifty thousand dollars. Any agricultural society, agricultural club or agricultural exposition which shall knowingly permit any immoral, lewd, obscene or indecent show or exhibition, use, or knowingly permit the use of, any gambling device, device, instrument or contrivance in the operation of which bets are laid or wagers made, wheel of fortune, or the playing or carrying on of any game of chance, upon the grounds used by it for, or during, an annual meeting, fair or exhibition, shall thereupon forfeit its rights to any moneys it would or might be entitled to receive under the provisions of this article; and it shall be the duty of the president and secretary or treasurer of every agricultural society, agricultural club, or agricultural exposition entitled to receive money under the provisions of this article, to certify, in its annual report to the commissioner of agriculture, executed under oath, on or before the fifteenth day of December, in each year, that at the last annual meeting, fair or exhibition held by or under the direction of such society, club or exposition, it did not knowingly permit any immoral, lewd, obscene or indecent show or exhibition by whatever name known, or use or knowingly permit the use of, any gambling device, device, instrument or contrivance in the operation of which bets were laid, or wagers made, any wheel of fortune, or the playing or carrying on of any game of chance, upon the grounds used by it for, or during such last annual meeting, fair or exhibition, which report shall be filed in the office of the commissioner of agriculture. If the president and secretary or treasurer of any agricultural society, agricultural club or agricultural exposition, entitled to receive moneys under the provisions of this article, shall neglect or refuse to make and file such certificates, such society, club or exposition shall thereupon be deemed to have forfeited all its right to any moneys it might otherwise be entitled to receive under this article for such year, but this shall not be construed to prohibit horse racing, or tests or trials of skill. (*Amended by L. 1912, ch. 73, in effect Mch. 6, 1912.*)

ARTICLE XV

(Article added by L. 1912, ch. 297, in effect July 1, 1912.)

INSPECTION AND SALE OF SEEDS.

Section 340. Inspection and sale of seeds.

341. Samples, publication of results of examination.

L. 1912, ch. 297.

Sale of seeds.

§§ 340, 341.

§ 340. **Inspection and sale of seeds.**—Within the meaning of this article “agricultural seeds” are defined as the seeds of alfalfa, Canadian blue grass, Kentucky blue grass, alsike clover, crimson clover, red clover, white clover, vetch orchard grass, rape, red top, and timothy which are to be used for sowing or seeding purposes. No person, firm or corporation shall sell, offer, expose or have in his possession for sale for the purposes of seeding, any seeds of grasses or clovers, of the kind known as agricultural seeds containing in excess of three per centum by count of foul or foreign seeds, unless every receptacle, package, sack or bag containing such seeds is plainly marked or labeled with the per centum of such foul or foreign seeds contained therein. (*Added by L. 1912, ch. 297, in effect July 1, 1912.*)

§ 341. **Samples, publication of results of examination.**—The commissioner of agriculture or his duly authorized representatives shall take samples of seed in triplicate in the presence of at least one witness and in the presence of such witness shall seal such samples and shall at the time of taking tender, and if accepted, deliver to the person apparently in charge one of such samples; one of the other samples the commissioner of agriculture shall cause to be analyzed. The director of the New York agricultural experiment station shall analyze or cause to be analyzed such samples of seeds taken under the provisions of this article as shall be submitted to him for that purpose by the commissioner of agriculture and shall report such analysis to the commissioner of agriculture, and for this purpose the New York agricultural experiment station may employ experts and incur such expenses as may be necessary to comply with the requirements of this article. The result of the analysis of the sample or samples so procured, together with such additional information as circumstances advise, shall be published in reports or bulletins from time to time. (*Added by L. 1912, ch. 297, in effect July 1, 1912.*)

ARTICLE XVI.

§§ 340, 341. **Laws repealed; when to take effect.**—(*Article renumbered 16 and sections 360 and 361, by L. 1912, ch. 297, in effect July 1, 1912.*)

AGRICULTURE.

State school established on Long Island; Education L., §§ 1185–1188.

APPEALS.

Code of Civil Procedure.

§ 1317. **Judgment or order on appeal.**—Upon an appeal from a judgment or an order, the appellate division of the supreme court, or appellate term, to which the appeal is taken, may reverse or affirm, wholly or partly, or

 Code Civ. Pro. §§ 1317, 1338. When reversal presumed.

L. 1912, chs. 361, 380.

may modify, the judgment or order appealed from, and each interlocutory judgment or intermediate order, which it is authorized to review, as specified in the notice of appeal, and as to any or all of the parties. It shall thereupon render judgment of affirmance, judgment of reversal and final judgment upon the right of any or all of the parties, or judgment of modification thereon, according to law except where it may be necessary or proper to grant a new trial or hearing, when it may grant a new trial or hearing. When a trial has been before a jury, the judgment of the appellate court must be rendered either upon special findings of the jury or the general verdict, or upon a motion to dismiss the complaint or to direct a verdict. A judgment, affirming wholly or partly a judgment, from which an appeal has been taken, shall not, expressly and in terms, award to the respondent, a sum of money, or other relief, which was awarded to him by the judgment so affirmed. After hearing the appeal, the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties. (*Amended by L. 1912, ch. 380, in effect Sept. 1, 1912.*)

§ 1338. When reversal presumed not to be on a question of fact.—Upon an appeal to the court of appeals from a judgment, reversing a judgment entered upon the report of a referee, upon the verdict of a jury or a decision, or a determination in the trial court; or from an order granting a new trial, upon such a reversal; it must be conclusively presumed that the judgment was not reversed, or the new trial granted, upon a question of fact, unless the particular question or questions of fact upon which the reversal was made or the new trial was granted are specified and referred to by number or other adequate designation in the body of the judgment or order appealed from. (*Amended by L. 1912, ch. 361, in effect Sept. 1, 1912.*)

Code of Criminal Procedure.

§ 308-a. Limitation of compensation to counsel.—No compensation shall be allowed to counsel on an appeal from a judgment of death for services in prosecuting the appeal unless the appeal shall have been brought on for argument within the time prescribed by section five hundred and thirty-six of this code. (*Added by L. 1912, ch. 262, in effect Sept. 1, 1912.*)

§ 536-a. Duty of district attorney.—Where the judgment appealed from is of death is * shall be the duty of the district attorney to expedite the appeal, which shall take precedence of all other appellate business in his office; and if for any reason the appeal be not brought on for argument within six months from the time when it is taken the district attorney shall forthwith communicate to the governor a written statement of the reasons for the delay. (*Added by L. 1912, ch. 262, in effect Sept. 1, 1912.*)

* So in original.

ATTACHMENT.**Code of Civil Procedure.**

§ 693. **Partners may apply to discharge attachment.**—If a warrant of attachment is levied upon the interest of one or more partners, in the property of a partnership, the other partners or any of them, may at any time before final judgment, apply to the judge who granted the warrant, or to the court, upon an affidavit showing the facts, for an order to discharge the attachment, as to that interest. (*Amended by L. 1912, ch. 389, in effect Apr. 15, 1912.*)

§ 694. **Undertaking to be given.**—Upon such an application, the applicant must give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, if judgment is recovered against the defendant whose interest in a partnership is so levied upon, an amount not exceeding a sum, specified in the undertaking, which must not be less than the value of the interest of the defendant, in the property seized by virtue of the attachment, as fixed by the court or judge. If the value, in the opinion of the court or judge, is uncertain, the sum shall be such as the court or judge determines. (*Amended by L. 1912, ch. 389, in effect Apr. 15, 1912.*)

§ 708. **Judgment in the principal action; how satisfied.**—Where an execution against property is issued upon a judgment for the plaintiff, in an action in which a warrant of attachment has been levied, the sheriff must satisfy it, as follows:

1. He must pay over to the plaintiff all money attached by him, and the proceeds of all sales of perishable property, or of any vessel or share of interest therein, or animals, sold by him, or of any debts, or other things in action collected or sold by him; or so much thereof as is necessary to satisfy the judgment.

2. If any balance remains due, he must sell, under the execution, the other personal property attached, or so much thereof as is necessary; including rights or shares in the stock of an association or corporation, or a bond or other instrument for the payment of money, executed and issued, with the interest coupons annexed, if any, by a government, state, county, public officer, or municipal or other corporation, which is in terms negotiable, or otherwise, whether past due, or yet to become due; but not including any other debt or thing in action. If the proceeds of that property are insufficient to satisfy the judgment, and the execution requires him to satisfy it out of any other personal property of the defendant, he must sell the personal property, upon which he has levied by virtue of the execution. If the proceeds of the personal property, applicable to the execution, are insufficient to satisfy the judgment, the sheriff must sell, under the execution, all the right, title, and interest, which the de-

Code Crim. Pro. § 554.

Admission to bail.

L. 1912, chs. 40, 99.

fendant had in the real property attached, at the time when the notice was filed, or at any time afterwards, before resorting to any other real property.

3. If personal property attached, belonging to the defendant, has passed out of the hands of the sheriff, without having been sold or converted into money, and the attachment has not been discharged as to that property, he must, if practicable, regain possession thereof; and, for that purpose, he has all the authority which he had, to seize the same under the warrant. A person, who willfully conceals or withholds such property from him, is liable to double damages, at the suit of the party aggrieved.

4. Until the judgment is paid, he may collect the debts and other things in action attached, and prosecute any undertaking, which he has taken in the course of the proceedings, and apply the proceeds thereof to the payment of the judgment.

5. At any time after levying the attachment, the court, upon the petition of the plaintiff, accompanied with an affidavit, specifying fully all the proceedings of the sheriff, since the levy under the warrant, the property attached, and the disposition thereof; and the affidavit of the sheriff, showing that he has used diligence, in endeavoring to collect the debts and other things in action attached, and that a portion thereof remains uncollected; may direct the sheriff to sell the remaining portion, upon such terms, and in such manner, as it thinks proper. Notice of the application must be given to the defendant's attorney, if the defendant appeared in the action. If the summons was not personally served on the defendant, and he did not appear, the court may make such order as to the service of notice, as it thinks proper; or may grant the application without notice. (*Amended by L. 1912, ch. 40, in effect Sept. 1, 1912.*)

ATTORNEYS.

Compensation, agreement for with guardian of infant: Judiciary L., § 474.

BAIL.

Code of Criminal Procedure.

§ 554. In what cases he may be admitted to bail, before conviction, et cetera.—Before conviction, defendant may be admitted to bail:

1. For his appearance before the magistrate on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required by section two hundred and twenty-one to return the depositions and statements upon the defendant being held to answer after examination.

3. After indictment, either upon the bench warrant issued for his arrest or upon an order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment

L. 1912, ch. 99.

Admission to bail.

Code Crim. Pro. § 554.

in the court in which it is found, or to which it may be sent or removed for trial. And any captain or sergeant of police, or acting sergeant of police, or lieutenant of police, in any city or village of this state, must take bail for his appearance before a competent and accessible magistrate the next morning from any person arrested for a misdemeanor between eleven o'clock in the morning and eight o'clock the next morning, just as soon as the person offers himself as bail for the person or persons arrested. When such captain or sergeant of police, or acting sergeant of police, or lieutenant of police, takes bail, he must take it by an undertaking in the form in this section mentioned, executed in his presence by the defendant and at least one surety, who must justify under oath, or by the deposit of money or personal property accompanied by an oath of ownership, in the cases and in such manner as hereinafter provided; and for these purposes the officer may administer all necessary oaths. The amount of bail taken by a captain or sergeant of police or acting sergeant of police, or lieutenant of police, under this section, must be as follows: If the offense be the violation of a corporation ordinance, the amount of the bail must be one hundred dollars, except that if a conviction upon the charge would render the defendant liable only for a fine, the amount of the bail must be double the largest fine that could be imposed; if the conviction would render him liable to imprisonment for thirty days or less, the amount of bail must be two hundred dollars; or, in such last mentioned case, it shall be in the discretion of such captain, sergeant of police, or acting sergeant of police, or lieutenant of police, to parole said prisoner, on his promise to appear on the following day before the proper magistrate. In all other cases the amount of bail must be five hundred dollars. In lieu of a bondsman, if the offense be the violation of a corporation ordinance where conviction renders the defendant liable to a fine only, he may give his personal undertaking, secured by a deposit with such captain or sergeant of police, or acting sergeant of police, or lieutenant of police, of money or personal property equal in value to double the largest fine that can be imposed. If personal property, the person making or authorizing the deposit shall take and subscribe an oath, that he is the owner thereof, and authorized to make such deposit. A false oath in this particular is declared to be perjury and punishable accordingly. Money or personal property thus deposited conveniently transportable shall be taken to the court, by the officer making the arrest, at the time defendant is required to appear and, upon the conditions of the undertaking being satisfied, it shall be restored to the defendant. If the deposit be personal property which cannot conveniently be brought to court, the defendant shall be entitled to an order from the magistrate directing the delivery thereof to the owner after the conditions of the undertaking have been satisfied. The form of undertaking, with surety, must be as follows:

We, A B, defendant, and residing at, in

....., and C D, surety, residing at, hereby jointly and severally undertake that the above A B, defendant, shall appear and answer the complaint (describing it briefly) before the magistrate before whom he would be arraigned if not bailed on the day of, eighteen hundred and ninety, and at o'clock, to answer to the complaint, and there remain to answer, subject to an order of the magistrate, and render himself in execution thereof, or if he fail to perform either of these conditions, then he will pay to the people of the state of New York the sum of dollars.

The form of the personal undertaking, with deposit, shall be as follows:

I, A B, defendant, residing at number..... street, in the of, hereby personally undertake and agree that I will appear and answer to the complaint of violating the ordinances of the corporation of, to wit: (here briefly state charge) before the magistrate before whom I would be arraigned if not bailed, on the day of, eighteen hundred and ninety, at o'clock in the noon, to answer to the complaint, and there remain to answer, subject to any order of the magistrate, and render myself in execution thereof, or if I fail to perform either of these conditions, then I will pay to the people of the state of New York the sum of dollars, to secure which payment there has been deposited herewith (if money, state amount; if personal property, briefly describe).

OATH AS TO OWNERSHIP.

State of }
County of } ss.:

....., being duly sworn, says, that he is the owner of the personal property, mentioned and described in the foregoing undertaking, and is authorized to, and hereby does, pledge and deposit the same, as security for the appearance of the defendant to answer the complaint made against him.

Subscribed and sworn to before me

the day of, 189..

4. Whenever a child under the age of sixteen years is arrested charged with juvenile delinquency, a captain or lieutenant or sergeant of police, in any city may accept, in lieu of bail, the personal recognizance in writing, without security, of a parent, guardian or other lawful custodian of such child, to produce such child before the proper court or magistrate on the following day, at a time and place to be specified in said recognizance; and thereupon he shall place said child in the care and custody of the person executing the same who, on failure to so produce said child, pursuant to the terms of such recognizance, shall be liable to punishment by the court or magistrate, as for a criminal contempt in the manner pro-

L. 1912, chs. 99, 362.

Railroad employees.

Code Crim. Pro. §§ 554-a, 577-a, 586.

vided in the judiciary law. A similar recognizance may be taken by the court or magistrate for the subsequent production of such child at a time and place to be specified therein, pending the final termination of the proceedings, and noncompliance therewith shall subject the person giving the same to the same punishment. Such failure to produce the child shall in either case vacate the said recognizance and warrant the immediate arrest of the child by order of the court or magistrate. But nothing in this act contained shall authorize the acceptance of such personal recognizance for the production of a child who has been the subject of a crime or a witness to its commission by another. (*Amended by L. 1912, ch. 99, in effect Apr. 3, 1912.*)

§ 554-a. **Bail of certain railroad employees.**—Whenever a person employed as an engineer, fireman, motorman, conductor, trainman or otherwise, on a train or car of a steam, elevated or street surface railroad, is arrested in any city on a criminal charge, arising from an accident in connection with the operation of such train or car, resulting in an injury or death to a person or injury to property, such engineer, fireman, motorman, conductor, trainman or other employee, shall be immediately taken before a magistrate, if one is accessible, and otherwise, before a captain or sergeant of police, or acting sergeant of police, or lieutenant of police, in charge of a police station in such city, and be given an opportunity to be admitted to bail. Such bail shall be taken in the same manner, so far as practicable, as is provided by section five hundred and fifty-four of this code, for the taking of bail in case of misdemeanors by a captain or sergeant of police, or acting sergeant of police, or lieutenant of police, in a city or village, except that the amount of bail shall be fixed by such officer at not exceeding one thousand dollars, and except that the undertaking shall provide for the appearance of the defendant before the magistrate, coroner, or other officer, who, except for this section, would be authorized to take such bail. Such officer may, however, in his discretion, instead of exacting bail, release such employee on his own recognizance, conditional for his appearance as above provided in case an undertaking is required. (*Amended by L. 1912, ch. 99, in effect Apr. 3, 1912.*)

§ 577-a. **Bail by fidelity or surety company.**—Bail may be given by a fidelity or surety company authorized to transact business within this state, and such company shall justify through its officers or attorney in the manner required by law of fidelity and surety companies. Any such company may execute the undertaking as surety by the hand of its officers or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which, under its corporate seal, shall be filed with the undertaking. (*Added by L. 1912, ch. 362, in effect Apr. 15, 1912.*)

§ 586. **Deposit; when and how made.**—The defendant, at any time after an order admitting him to bail, instead of giving bail, or a witness committed in default of an undertaking to appear and testify, instead of

Code Crim. Pro. § 586.

Deposit, when made.

L. 1912, ch. 338.

entering into such an undertaking, may deposit with the county treasurer of the county in which he is held to answer or appear, or with the magistrate by whom he is so held, or with any other justice or magistrate of the same court or with the clerk or deputy clerk of a court held by any such justice or magistrate, or with the warden, deputy warden or keeper in charge of the jail in which he so stands committed, the sum mentioned in the order of commitment, and upon delivering to the officer in whose custody he is, a certificate of such deposit from such justice, magistrate, clerk or deputy clerk, or upon the said sum being deposited in money with such warden, deputy warden or keeper in charge, the defendant must forthwith be discharged from custody.

When any such deposit is so made, the justice, magistrate or other person with whom it is deposited shall deposit the sum so received by him in the same manner as may be by law provided for the payment and deposit of money with the clerk of such court. (*Amended by L. 1912, ch. 338, in effect Sept. 1, 1912.*)

BANKING LAW.

(L. 1909, ch. 10.)

§ 5-a. Retirement of deputies, clerks and examiners.—The superintendent may, in his discretion, retire any deputy, clerk or examiner who shall have served in the department for a period of twenty years and who shall have become physically or mentally incapacitated for the further performance of the duties of his position. A person retired from service pursuant to this section shall be paid out of the funds appropriated to the banking department an annual sum, in equal monthly instalments, equal to one-half of the average amount of his annual or per diem salary for the period of two fiscal years preceding the time of such retirement. (*Added by L. 1912, ch. 212, in effect Apr. 8, 1912.*)

§ 8. Powers of superintendent.—Every corporation and individual banker specified in section two of this chapter shall be subject to the inspection and supervision of the superintendent of banks. He shall, either personally or by some competent person or persons to be appointed by him, to be known as examiners, visit and examine every bank, trust company and individual banker at least twice in each year and every other corporation specified in section two of this chapter at least once in each year. He shall have power in like manner to examine every individual banker and every corporation specified in section two at any time prior to its dissolution, whenever, in his judgment, its condition and management is or has been such as to render an examination of its affairs necessary and expedient. On every such examination, inquiry shall be made as to the condition and resources of the corporation, the mode of conducting and managing its affairs, the action of its directors, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs; and as to such other matters as the superintendent may prescribe. The superintendent and every such examiner shall have power to administer an oath to any person whose testimony may be required on the examination of any corporation or individual banker specified in section two of this chapter, or on the examination of any agency of any foreign bank or banking corporation as hereinafter provided, and to compel the appearance and attendance of any such person for the purpose of any such examination. Such examination may be made and such inquiry instituted or continued in the direction of the superintendent of banks after he has taken possession of the property and business of any such corporation or individual banker under the provisions of section nineteen of this chapter until such corporation or individual banker shall resume business or the affairs of such corporation or individual banker shall be finally

liquidated as therein provided. He shall also have power to examine or cause to be examined in like manner every agency located in this state of any foreign bank or banking corporation for the purpose of ascertaining whether it has violated any law of the state, and for such other purposes and as to such other matters as the superintendent may prescribe. If the examination shall be made by the superintendent, or by one or more of the regular clerks in the department, no charge shall be made except for necessary traveling and other actual expenses. The result of such examination of a savings bank shall be certified by the examiners, or one of them, upon the records of the corporation examined. (*Amended by L. 1912, ch. 104, in effect Apr. 3, 1912.*)

Construction.—Two things are to be noted in construing the third sentence of this section that "He (the superintendent) shall have power in like manner to examine every corporation and individual banker specified in section two, whenever, in his judgment, its condition and management is such as to render an examination of its affairs necessary and expedient." It was in the statute before the enactment of section nineteen. It was in force during a long period when the liquidation of embarrassed or insolvent banks was conducted by receivers under the direction of the courts, and when no superintendent ever claimed that it gave him authority to make a quasi judicial investigation for the purpose of determining, not whether a bank was complying with the law, but how it had been brought to disaster. The language of the sentence quoted indicates that it was intended to provide for such examination, in addition to those which are to be made periodically, whenever the "condition and management" of a bank is such as to render it necessary and expedient. This provision was put into the statute obviously for the purpose of enabling the superintendent to make examinations in addition to those which are made at regular intervals, and whenever any exigency necessitates prompt action; but the power is limited to occasions when the condition and management of a bank is such as to render an examination of its affairs necessary or expedient. When once the superintendent has taken possession of a bank by virtue of the authority vested in him by section nineteen, there is no longer any management except his own, and his assumption of control proceeds, upon the theory that he has previously satisfied himself of the necessity for superseding the management and taking official possession. *Matter of Union Bank (1912)*, 204 N. Y. 313, revg. 147 App. Div. 593, 133 N. Y. Supp. 62.

See also

§ 17. Impairment of capital.

Authority of Superintendent of Banks to expend funds of bank to conserve its assets.—When the Superintendent of Banks deems it necessary and proper, in order to conserve the assets of a bank which has been taken charge of by him, that some of the funds of the bank be expended for that purpose, he may do so without an application to the Supreme Court and is not liable for loss of assets occasioned by such action, unless he fails to honestly exercise his best judgment and discretion. *Rept. of Atty. Genl., Feb. 2, 1912.*

§ 19. Proceedings against and liquidation of delinquent corporations and individual bankers.

The theory of the Banking Law (sections 8 and 19) is that the Superintendent of Banks shall not take possession of a bank for purposes of liquidation until after he has made an examination from which it appears that the conditions warrant the exercise of the power. The statutory enumeration of the superintendent's

duties which follow upon the taking of such possession indicates the legislative intent to transfer to him the general duties and functions which had theretofore been exercised by receivers, but it gives him no power to take possession for the purpose of, or to thereafter conduct, a quasi judicial investigation for the purpose of determining not whether a bank was complying with the law, but how it had been brought to disaster. *Matter of Union Bank* (1912), 204 N. Y. 313, revg. 147 App. Div. 593, 133 N. Y. Supp. 62 and 73 Misc. 404, 132 N. Y. Supp. 905.

By virtue of the provisions of this section, the Legislature clearly contemplated that the Superintendent of Banks should take possession of the property and business of the bank, as it existed at the time he determined that the public interest required such action, but that any action with respect to the property or business of the bank should be brought by or against the corporation, which still retains its corporate existence, as if still managed by its board of directors. *Richardson v. Cheney* (1911), 146 App. Div. 690.

Enforcement of liability of stockholders.—Necessity for an action by the State Superintendent of Banks to enforce the liability of stockholders must be shown to exist before an action can be brought under this section. A mere statement by the superintendent that he considers such action necessary is insufficient. *Cheney v. Scharmann* (1911), 145 App. Div. 456, 129 N. Y. Supp. 993.

The complaint in an action under this section should allege the facts which render it necessary to enforce the stockholder's liability. *Cheney v. Scharmann* (1911), 145 App. Div. 456, 129 N. Y. Supp. 993.

See generally. *Koster v. Lafayette Trust Co.* (1911), 147 App. Div. 63, 131 N. Y. Supp. 799.

§ 27. Restrictions.

Application of subdivision 8.—Subdivision 8 of this section, providing that no banking corporation shall make any loan or discount on the security of its own stock, nor be the purchaser thereof, unless necessary to prevent loss upon a debt previously contracted in good faith, etc., relates to security taken and held upon which the bank obtains a lien which it may enforce in the event of a default by the debtor. Hence, said section is not applicable where a bank merely discounts the notes of a stockholder without taking his stock as collateral security. *Strabmann v. Yorkville Bank* (1911), 148 App. Div. 8.

Violation of section, see *People v. Knapp* (1911), 147 App. Div. 436, 132 N. Y. Sup. 747.

§ 37. Submission of merger agreement to stockholders.

Publication of a notice of the submission of a merger agreement of two trust companies should be made in a daily newspaper on the twelve secular days of two successive weeks. *Rept. of Atty. Genl.*, Feb. 9, 1912.

§ 42. Meetings of directors or trustees and reports thereto.

Duties of executive committee; liability of directors.—It is the custom of banks and trust companies in New York city to intrust to the executive committee of the board of directors the supervision of the detail management of the corporation. Such custom, however, does not relieve the directors generally of all responsibility. They are bound to use every effort that a prudent business man would use in supervising his own affairs with the right, however, ordinarily to rely upon the vigilance of the executive committee to ascertain and report any irregularity or improvident acts in the management of the corporation. For example, they must make diligent efforts to attend meetings of the board and to advance the interests of the corporation by advice and by active work, and, if they learn of any irregularity in the proceedings of the bank they are bound to take steps to correct it.

They are not, however, required to watch the small every-day transactions of the corporation, nor are they chargeable with such knowledge as would be acquired by so doing. The executive committee is charged with this duty of minute supervision, and the directors are not answerable for any neglect of this duty by the committee. As the directors may delegate such detail work they are not responsible for its negligent performance. Directors of a trust company are not generally liable to stockholders for the negligence of the members of the executive committee as they would be if they were chargeable with all the knowledge which might be imputable to a member of such committee by reason of his supervision of the details of the business. Where the by-laws of a trust company provided for an executive committee to which was given all the powers of the board of directors while the board was not in session, and further provided that the committee should meet at least once a week and should have charge of all investments and disbursements over \$200, and of all the details of the company's business, it is clear that a difference was thereby recognized between the supervision to be assumed by members of the committee and by members of the board of directors generally. A director of a trust company is not negligent in sanctioning a loan made upon the note of a responsible party and secured by bonds whose value had been attested by repeated purchases by leading financiers, even though it later develops that the security is inadequate and that the president of the bank had secretly agreed that the makers should not be personally liable on the notes. Directors of a trust company, who had previously resigned, are not chargeable with the negligence of the board in later releasing the makers of such notes from personal liability. *Kavanaugh v. Gould* (1911), 147 App. Div. 281.

§ 66. General powers.—In addition to the powers conferred by the general and stock corporation laws every bank shall have power:

1. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidence of debt; by receiving deposits; by buying and selling exchange, coin and bullion, by loaning money on personal security; and by obtaining, issuing and circulating notes according to the provisions of this chapter.

2. To take and become the owner of any stocks or bonds or interest-bearing obligations of the United States, or of the state of New York, or of any city, county, town or village of this state, the interest on which is not in arrears.

3. To purchase, take, hold and own the stock of any safe deposit company organized and existing under the laws of the state of New York, and conducting or carrying on business on premises owned or leased by the bank purchasing, taking, holding or owning such stock, provided the written approval of the superintendent of banks to such purchasing, taking, holding or owning is first obtained. A copy of said approval, when issued, shall be filed in the office of the superintendent of banks, and may be given or withheld by the superintendent of banks in his discretion. Such written approval when issued, provided the purchasing, taking, holding or owning of the stock of the safe deposit company has been duly authorized by the directors of the bank, shall constitute sufficient authority for the

L. 1912, ch. 237.

Trustees and their powers.

§§ 71, 74, 137.

bank thereafter to hold and own the shares of stock of the safe deposit company in the number and amount specified in the said written approval.

4. To purchase, hold and convey real property for the following purposes:

a. Such as shall be necessary for its immediate accommodation in the convenient transaction of its business.

b. Such as shall be mortgaged to it in good faith, by way of security for loans made by, or moneys due to, such corporation.

c. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

d. Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

No such corporation shall purchase, hold or convey real property in any other case or for any other purpose, and all conveyance of real property shall be made to it directly and by name.

All such corporations and all individual bankers shall be banks of discount and deposit as well as of circulation, and the usual business of banking of such corporations or individual bankers shall be transacted at the place where such corporations or individual bankers shall be located, agreeably to the location specified in the certificates required by law to be made by them respectively, and filed in the office of the superintendent of banks, and not elsewhere, except as otherwise provided in this chapter in relation to the redemption of circulating notes by agents. (*Amended by L. 1912, ch. 101, in effect Apr. 3, 1912.*)

§ 71. Individual liability of stockholders.

Duty of receiver to enforce liability of stockholder by suit.—The Legislature did not intend to make it the absolute duty of a receiver to sue stockholders to enforce their liability. Hence, although a permanent receiver failed to bring a statutory action against a solvent stockholder within the time limited by the statute, his account should not be surcharged with the amount which he might have recovered. The courts cannot hold such act mandatory so as to impose a positive duty where it merely confers a discretionary power. *People v. Bank of Staten Island* (1911), 146 App. Div. 278.

§ 74. Rate of interest.

Usury.—The statutes relating to usury do not apply to discounts or loans made by private bankers. *Matter of Thornburgh* (1911), 72 Misc. 619, 132 N. Y. Supp. 268.

§ 137. **Trustees and their powers.**—There shall be a board of not less than thirteen trustees of every such corporation, who shall have the entire management and control of all its affairs, and who shall elect from their number, or otherwise, a president and two vice-presidents, and such other officers as they may deem fit. The persons named in the certificate of authorization shall be the first trustees. A vacancy in the board shall be filled by the board, as soon as practicable, at a regular meeting after the vacancy occurs. Each trustee, whether named in the certificate of

authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued or when notified of such election, take an oath that he will, so far as it devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated any of the provisions of law applicable to such corporation. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the superintendent of banks and filed and preserved in his office. No person who is not a resident of this state or against whom a judgment for any sum of money shall have been recovered or shall hereafter be recovered and remain unsatisfied of record, or unsecured upon appeal, for a period of more than three months, or who hereafter takes the benefit of any law of bankruptcy or insolvency, or who makes a general assignment for the benefit of creditors, shall be a trustee of any savings bank, and the office of any such trustee is hereby vacated; except that a resident of a state which adjoins the city of New York may be a trustee of a savings bank in such city, provided that not more than one-fifth of the trustees of any savings banks shall be nonresidents of the state of New York. It shall be lawful for the board of trustees of every such corporation by a resolution to be incorporated in its by-laws, a copy of which shall also be filed with the superintendent of banks, to reduce the number of trustees named in the original charter of such corporation to a number not less than the minimum named in this article. Such reduction shall be effected gradually by the occurrence of vacancies by death, resignation, or forfeiture, until the number is reduced to thirteen, or to such greater number as shall be designated in the aforesaid resolution; or the number of trustees may be increased to any number designated in a resolution for that purpose, where reasons therefor are shown to the satisfaction of the superintendent and his consent in writing is obtained thereto. It shall not be lawful for a majority of the board of trustees of any savings bank to belong to the board of directors of any one bank or national banking association. When any trustee of a savings bank shall, by becoming a director of a bank or national banking association, cause a majority of the trustees of such savings bank to be directors of any one bank or national banking association, his term of office as trustee of the savings bank shall thereupon end. Any savings bank knowingly violating this provision shall forfeit all its rights, privileges and franchises. Such violation shall be determined in the same manner as a violation of subdivision six of section twenty-seven of article two of this chapter. (*Amended by L. 1912, ch. 237, in effect Apr. 9, 1912.*)

§ 144. Deposits of minors, and trust deposits, and deposits in the names of more than one person.

Payment of trust funds.—A bank should not be directed to pay trust funds on deposit during the life of the depositor or trustee unless it is made with his con-

L. 1912, chs. 49, 100.

Lawful money reserve.

§§ 146, 186, 196, 198.

sent or he is made a party to the action. *Hemmerick v. Union Dime Sav. Institution* (1911), 144 App. Div. 413, 419, 129 N. Y. Supp. 267.

§ 146. Savings banks; investments.—*Subd. 4, amended by L. 1912, ch. 100, in effect Apr. 3, 1912, as follows:*

4. In the stocks or bonds of any city, county, town or village, school district bonds and union free school district bonds issued for school purposes, poor district bonds, or in the interest-bearing obligations of any city, county, town or village of this state, issued pursuant to the authority of any law of the state for the payment of which the faith and credit of the municipality issuing them are pledged.

The phrase "the valuation of said city for the purposes of taxation" means the sum at which the property is assessed. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 686.

Legal investments.—The bonds of the Board of Commissioners of the Port of New Orleans are not legal investments for savings banks of this state. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 611.

§ 186. Powers of trust company.

Application and construction.—Trust companies should be confined not only within the words, but also within the spirit of the statutory provisions which declares that a corporation shall not possess or exercise any corporate powers not given by law or not necessary to the exercise of the powers so given. Such authority does not permit a trust company to enter into speculative and uncertain schemes, or, unless under peculiar circumstances, become the guarantor of the indebtedness or business of others. *Davidge v. Guardian Trust Co.* (1911), 203 N. Y. 331.

Advertisement of bonds; issuance of prospectus.—As subdivision one of this section gives a trust company power to act as the fiscal agent of any corporation and to buy and sell stocks and bonds, it follows that it has the right to advertise for sale of the bonds of a corporation whose fiscal agent it is and to prepare a prospectus for such bonds. The directors of the trust company cannot be held liable for loss occurring to the company on the ground that their act in issuing the prospectus was *ultra vires*. *Kavanaugh v. Gould* (1911), 147 App. Div. 281, 131 N. Y. Supp. 1059.

Violation of subdivision 11, see *People v. Knapp*, 147 App. Div. 436, 132 N. Y. Supp. 747.

§ 196. Liability of stockholders and directors.

Action by Superintendent of Banks to enforce liability of stockholders. *Cheney v. Scharmann* (1911), 145 App. Div. 456, 129 N. Y. Supp. 693.

§ 198. Lawful money reserve.—Every trust company having its principal place of business or a branch office for the receipt and payment of deposits in a borough in any city in the state which borough had according to the last preceding state or United States census a population of eighteen hundred thousand or over shall at all times have on hand a reserve fund equal to at least fifteen per centum of the aggregate of its deposits, exclusive of moneys held by it in trust, which are not made payable under the conditions of the trust within thirty days and also exclusive of time deposits not payable within thirty days represented by certificates showing the amount of the deposit, the date of issue, and the date when due and also exclusive of deposits which are secured by out-

standing unmatured bonds or other obligations issued by the state of New York, or secured by outstanding unmatured bonds, corporate stock, revenue bonds, assessment bonds or other obligations issued by the city of New York, and exclusive also of an amount equal to the market value, but not exceeding the par value, of any such bonds or other obligations of the state of New York or of the city of New York owned and held by such trust company or held by a public department, a public officer or officers of this state, or of any other state, or of the United States, in trust for such trust company. The whole of such reserve fund must consist of either lawful money of the United States, gold certificates, silver certificates, or notes or bills issued by any lawfully organized national banking association. Every trust company having its principal place of business in a borough in any city in the state which borough had according to the last preceding state or United States census a population of less than eighteen hundred thousand which does not maintain a branch office in a borough having a population of over eighteen hundred thousand inhabitants according to the last preceding state or United States census, shall at all times have on hand a reserve fund equal to at least fifteen per centum of the aggregate of its deposits, exclusive of moneys held by it in trust, which are not made payable under the conditions of the trust within thirty days and also exclusive of time deposits not payable within thirty days represented by certificates showing the amount of the deposit, the date of issue and the date when due and also exclusive of deposits which are secured by outstanding unmatured bonds or other obligations issued by the state of New York, or secured by outstanding unmatured bonds, corporate stock, revenue bonds, assessment bonds or other obligations issued by the city of New York, and exclusive also of an amount equal to the market value, but not exceeding the par value, of any such bonds or other obligations of the state of New York or of the city of New York owned and held by such trust company or held by a public department, a public officer or officers of this state, or of any other state, or of the United States, in trust for such trust company. The whole of such reserve fund may, and at least two-thirds thereof must, consist of either lawful money of the United States, gold certificates, silver certificates, or notes or bills issued by any lawfully organized national banking association, and the balance thereof over and above the part consisting of lawful money of the United States, gold certificates, silver certificates, notes or bills issued by any lawfully organized national banking association must consist of moneys on deposit subject to call in any bank or trust company in this state having a capital of at least two hundred thousand dollars or a capital and surplus of at least three hundred thousand dollars, and approved by the superintendent of banks. Every trust company having its principal place of business elsewhere in this state shall at all times have on hand a reserve fund equal to at least ten per centum of its aggregate deposits, exclusive of moneys held by it in trust

which are not made payable under the conditions of the trust within thirty days and also exclusive of time deposits not payable within thirty days represented by certificates showing the amount of deposit, the date of issue and the date when due and also exclusive of deposits which are secured by outstanding unmatured bonds or other obligations issued by the state of New York, or secured by outstanding unmatured bonds, corporate stock, revenue bonds, assessment bonds or other obligations issued by the city of New York, and exclusive also of an amount equal to the market value, but not exceeding the par value, of any such bonds or other obligations of the state of New York or of the city of New York owned and held by such trust company or held by a public department, a public officer or officers of this state, or of any other state, or of the United States, in trust for such trust company. The whole of such last mentioned reserve fund may, and, if such trust company has its principal place of business in a city of the first class or in a city of the second class, at least fifty per centum thereof must, consist either of lawful money of the United States, gold certificates, silver certificates, or notes or bills, issued by any lawfully organized national banking association; and the balance thereof over and above the part consisting of lawful money of the United States, gold certificates, silver certificates, notes and bills, issued by any lawfully organized national banking association, must consist of money on deposit subject to call in any bank or trust company in this state having a capital of at least two hundred thousand dollars, or a capital and surplus of at least three hundred thousand dollars and approved by the superintendent of banks. If the principal place of business of such trust company is located in an incorporated or unincorporated village, or in a city of the third class, the whole of such last mentioned reserve fund may, and at least thirty per centum thereof must, consist either of lawful money of the United States, gold certificates, silver certificates, or notes or bills, issued by any lawfully organized national banking association; and the balance thereof over and above the part consisting of lawful money of the United States, gold certificates, silver certificates, notes and bills, issued by any lawfully organized national banking association, must consist of money on deposit subject to call in any bank or trust company in this state having a capital of at least two hundred thousand dollars, or a capital and surplus of at least three hundred thousand dollars and approved by the superintendent of banks. The amounts to be kept on hand, as above provided, shall be called the lawful money reserve. If the lawful money reserve of any trust company shall be less than the amount required by this section such trust company shall not increase its liability by making any new loans or discounts otherwise than by discounting bills of exchange, payable on sight or making any dividends of its profits until the full amount of its lawful money reserve has been restored. The superintendent of banks may notify any trust company whose lawful money reserve shall be below the amount herein required to make good such reserve,

§§ 211, 215, 219.

Co-operative sav. assns.; capital, etc. L. 1912, chs. 103, 192.

and if it shall fail for thirty days thereafter to make good such reserve such trust company shall be deemed insolvent, and may be proceeded against as an insolvent moneyed corporation. (*Amended by L. 1911, ch. 200, and L. 1912, ch. 49, in effect Mch. 18, 1912.*)

Computing amount of reserve fund.—The provisions of this section entitle a trust company to exclude deposits in computing the amount of its reserve fund equal to the amount of State or New York City bonds in which its capital may be invested, including bonds assigned to the Superintendent of Banks in accordance with section 14 of the Banking Law. Rept. of Atty. Genl. (1911), Vol. 2, p. 606.

§ 211. **Co-operative savings associations; fines.**—*Subd. k, amended by L. 1912, ch. 192, in effect April 4, 1912, as follows:*

k.—Fines. They may provide for the imposition and collection of fines from shareholders, their legal representatives or successors in interest, who neglect or refuse to make payment of dues, interest or premium when due, provided, however, that no fines shall exceed two per centum per month for the period during which such dues, interest and premium have remained in default, except that any association whose by-laws provide for the weekly payment of dues, may in lieu of the fines heretofore provided, collect a fine of one cent per share for each default in the payment of dues; and provided further that no fine shall be charged against or deducted from the sums actually paid as dues. No other penalties shall be imposed in such by-laws.

§ 215. **Capital and shares.**—The capital of every such association shall consist of the dues and dividends credited to its members, either individually or by series, and shall be divided into shares. All shares hereafter issued shall have a matured value of not less than one hundred and not more than two hundred dollars, except that an association incorporated prior to January first, nineteen hundred and six, which has issued installment shares having a matured value of two hundred and fifty dollars per share, may, with the written approval of the superintendent of banks, continue to issue such shares. Every such association shall be either "permanent" or "serial" in character as provided by the terms of its by-laws. A permanent association may issue shares at any time, and credit its dividends upon the pass-books of its members. A serial association may issue shares in series, and credit its dividends equally upon each share issued in such series. No shares of a prior series shall be issued after the issuing of shares in a later series, when issued upon the serial plan, except at the book value at the last distribution of profits plus the dues and accrued interest since such distribution. Shares which have not been transferred to the association as security for the repayment of a loan shall be called free shares. Shares that have been so transferred shall be called pledged shares. Any such association may issue the shares classified below, when so provided in its by-laws. (*Amended by L. 1910, ch. 126, and L. 1912, ch. 103, in effect Apr. 3, 1912.*)

§ 219. **Real estate mortgages.**—No mortgage shall be taken by any such

association upon real estate which is not situated within a radius of fifty miles of the principal office of the association. No association shall, except as provided in section two hundred and twenty-three of this chapter, loan any portion of its funds upon the security of real estate upon which there is a prior lien or encumbrance, or accept from a borrower, a mortgage upon real estate which is not a first mortgage, or purchase real estate securities, or invest any portion of its funds in real estate securities which are not first liens upon the property described in them, unless every prior mortgage, lien, or encumbrance is owned by it, and no prior mortgage, lien or encumbrance shall be sold, assigned or transferred by any such association until all subsequent mortgages, liens or encumbrances owned by it shall have been fully paid and satisfied. Within the limitations contained in section two hundred and twenty-three of this chapter, any association may loan a portion of its funds upon so-called second or divided mortgages, subject to existing mortgages or prior liens, and may agree with the borrowing members in such second or divided mortgages that it will assume and pay the underlying mortgages or liens upon the fulfillment by them of the conditions therein contained; provided, however, that no such association shall advance or agree to advance in any such loans a sum which, taken together with the amount of all prior liens or encumbrances, exceeds seventy-five per centum of the appraised value of the real estate upon which such loans are made. Nor shall any such loan be made upon the security of vacant land; and furthermore all such underlying mortgages shall be included in the liabilities of the association in its reports both to the superintendent of banks and to its members; and provided, further, that any such association which has invested or shall invest any portion of its funds upon second or divided mortgages shall invest not less than fifteen per centum the first year, twenty per centum the second year, and thereafter twenty-five per centum of its receipts applicable for loaning purposes in the same securities in which savings banks are by section one hundred and forty-six of this chapter authorized to invest their deposits and the income derived therefrom, until the funds so invested shall amount to at least twenty-five per centum, and to be at all times so maintained, of all mortgages and liens underlying the mortgages or liens held by it, except that after said fund shall amount to fifteen per centum of all underlying mortgages and liens held by such corporations, the remainder, or any portion of the remainder thereof, may be used in cases of emergency in the payment of withdrawals. Provided, however, such investment in such securities need not exceed five hundred thousand dollars in any case. No loan shall be made on bond and mortgage, or purchase made thereof, except upon report in writing of two or more appraisers appointed by the board of directors, signed by them, certifying that they have examined the property and that in their judgment it affords adequate security for the loan made thereon. Such reports shall be filed and preserved among the records of the association, and any member shall have access thereto. The equity

of the mortgagor shall be at least twenty per centum over all encumbrances less the withdrawal value of any shares that are pledged as collateral or additional security. No mortgage shall be taken upon vacant land whereby the total investment of any association in such unimproved real estate, either as security for loans or by title of ownership, when taken together, shall exceed fifteen per centum of the accumulated capital of such association. Provided, however, that it shall be lawful for any association to release any portion of any vacant land covered by a mortgage held by it upon payment of not less than the pro rata amount of the lien of such mortgage on the land released and to take back as part payment therefor, a new mortgage on the land released for not to exceed seventy per centum of the value of the land released, and it shall also be lawful for any association to convey any portion of any vacant land owned by it and to take back a purchase money mortgage on the land conveyed for not to exceed seventy per centum of the selling price.

For the purposes of this article the term "vacant," or "unimproved" land or real estate, shall be construed to mean all land the value of which exceeds the appraised value of the income producing improvements thereon. Loans secured by mortgages on vacant land shall not exceed fifty per centum of the actual value thereof. (*Amended by L. 1910, ch. 126, L. 1911, ch. 861 and L. 1912, ch. 102, in effect Apr. 3, 1912.*)

Mortgage upon vacant lands.—It would not be lawful for a savings and loan association to take a mortgage upon vacant land where its aggregate loans upon the land would exceed fifteen per centum of the accumulated capital of the association, although, by the substitution of these mortgages, the amount of these investments would be reduced. Rept. of Atty. Genl. (1911), Vol. 2, p. 653.

BANKS.

False statements or rumors; Penal L., § 303. Falsification of books; Penal L., § 304.

BENEVOLENT ORDERS LAW.

(L. 1909, ch. 11.)

§ 2. **Organization.**—*Subdivision 21, added by L. 1912, ch. 65, in effect Mch. 25, 1912, as follows:*

21. A tent of the Knights of the Maccabees of the World, duly chartered and instituted according to the general rules and regulations of the supreme tent of the Knights of the Maccabees of the World: *Subdivision 21 also added by L. 1912, ch. 213, in effect Apr. 8, 1912, as follows:*

21.* Any subordinate lodge of the Loyal Order of Moose, duly chartered and instituted in accordance with the constitution and laws of the supreme lodge of the world, Loyal Order of Moose.

Last paragraph amended by L. 1912, ch. 65, in effect Mch. 25, 1912, as follows:

May elect at any regular communication, convocation, encampment or other regular meeting thereof, by whatever name known, held in accordance with the constitution and general rules and regulations of such grand lodge, chapter, commandery or council, or other governing body to which it belongs, or with which it is connected, and in conformity to its own by-laws, if it has any, three trustees for such lodge, chapter, commandery, consistory, council, temple, post, court, tribe, grotto, aerie, camp or tent, who shall be members thereof in full membership and in good and regular standing therein; and may file in the office of the secretary of state, a certificate of such election, signed and acknowledged by the first three elective officers of such lodge, chapter, commandery, consistory, council, temple, post, court, tribe, grotto, aerie, camp or tent, stating the time and place of such election and that the same was regular, the names of such trustees, and the term, severally, for which they are elected to serve, and the name of the lodge, chapter, commandery, consistory, council, temple, post, court, tribe, grotto, aerie, camp or tent, for which they are elected.

§ 3. **Powers.**—Such trustees may take, hold and convey by and under the direction of such lodge, chapter, commandery, consistory, council, temple, post, aerie, camp or tent, all the temporalities and property belonging thereto, whether real or personal, and whether given, granted or devised directly to it or to any person or persons for it, or in trust for its use and benefit, and may sue for and recover, hold and enjoy all the debts, demands, rights and privileges, and all buildings and places of assemblage, with the appurtenances, and all other estate and property belonging to it in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully as if the right and title thereto had been originally vested in them; and may purchase and hold for the purpose of the lodge, chapter, commandery, consistory, council, temple, aerie, post,

* This subdivision should have been numbered 22.

camp or tent, other real and personal property, and demise, lease and improve the same.

They may also issue their bonds or other evidences of indebtedness in such amounts and for such time and in such form as they shall determine for the exclusive purpose of raising money to pay for any real estate purchased and held by them, and for the improvement of the same, as hereinabove provided, and may mortgage such real estate for the purpose of securing the bonds or other evidences of indebtedness so issued by them. The proceeds of such bonds or other evidences of indebtedness shall be applied exclusively to pay for such real estate and the improvement thereof. Every such lodge, chapter, commandery, consistory, council, temple, post, aerie, camp or tent may make rules and regulations, not inconsistent with the laws of this state, or with the constitution or general rules or laws of the grand lodge or other governing body to which it is subordinate, for managing the temporal affairs thereof, and for the disposition of its property and other temporal concerns and revenue belonging to it, and the secretary and treasurer thereof, duly elected and installed according to its constitution and general regulations and law, shall, for the time being, be ex-officio its secretary and treasurer. No board of trustees for any lodge, chapter, commandery, consistory, council, temple, aerie, post, camp or tent filing the certificate aforesaid, shall be deemed to be dissolved for any neglect or omission to elect a trustee annually, or fill any vacancy or vacancies that may occur or exist at any time in said board, but it shall and may be lawful for said lodge, chapter, commandery, consistory, council, temple, aerie, post, camp or tent to fill such vacancy or vacancies at any regular communication thereafter to be held, and till a vacancy arising from the expiration of the term of office of a trustee is filled, as aforesaid, he shall continue to hold the said office and perform the duties thereof. (*Amended by L. 1910, ch. 420 and L. 1912, ch. 65, in effect Mch. 25, 1912.*)

§ 4. **Terms of trustees.**—The persons first elected trustees of such lodge, chapter, commandery, consistory, council, temple or post, if a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, shall be divided by lot by the officer making the certificate of election, so that the term of one shall expire on the day of the festival of Saint John the Evangelist, next thereafter, and another in one year, and the third in two years thereafter. If other than a lodge or chapter of Free and Accepted Masons, the trustees first elected shall be divided by lot by the officers making the certificate of election, so that the term of one will expire in one year, one in two years, and one in three years thereafter. One trustee shall annually thereafter be elected by such lodge, chapter, commandery, consistory, council, temple, post, or tent, by ballot, in the same manner and at the same time as the first three officers thereof severally are or shall be elected according to its constitution, by-laws and regulations; and a certificate of such election under the hands of such officers and the seal of the lodge,

chapter, commandery, consistory, council, temple, post, or tent, if it has any, shall be made, and shall be evidence of such election and entitle the person so elected to act as trustee. If any trustee dies, resigns, demits, is suspended or expelled, removes from the state, or becomes incapacitated for performing the duties of his office, his office shall be deemed vacant. Such lodge, chapter, commandery, consistory, council, temple, post or tent may, at any regular communication, convocation, encampment or other regular meeting, by whatever name known, fill any vacancy in the office of trustee, by ballot, which election shall be certified in like manner and with like effect as an annual election, and the person so elected shall hold his office during the unexpired term of the trustee, whose place he was elected to fill. (*Amended by L. 1912, ch. 65, in effect Mch. 25, 1912.*)

§ 5. **Powers of trustees.**—Such trustees shall have the care, management and control of all the temporalities and property of the lodge, chapter, commandery, consistory, council, temple, post or tent and they shall not sell, convey, mortgage or dispose of any property except by and under its direction, duly had or given at a regular or stated communication, convocation, encampment or meeting thereof, according to its constitution and general regulations. They shall at all times obey and abide by the directions, orders and resolutions of such lodge, chapter, commandery, consistory, council, temple, post or tent, duly passed at any regular or stated communication, convocation, encampment or meeting thereof not in conflict with the constitution and laws of this state or of the grand body to which it shall be subordinate, or of such lodge, chapter, commandery, consistory, council, temple, post or tent. If a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, surrender its warrant to the grand body to which it is subordinate or is expelled or becomes extinct, according to the general rules or regulations of such body, the trustees then in office shall, out of the property belonging to such lodge or chapter, satisfy all just debts due from it and transfer the residue of its property to the “trustees of the masonic hall and asylum fund,” a corporation created by chapter two hundred and seventy-two of the laws of eighteen hundred and sixty-four, entitled “An act to incorporate the trustees of the masonic hall and asylum fund,” and unless reclaimed by such lodge or chapter within three years from such transfer, in accordance with the constitution and general regulations of such grand body, the same, with the avails or increase thereof, shall be applied by the “trustees of the masonic hall and asylum fund” to the benevolent purposes for which such trustees were created in and by such act. (*Amended by L. 1912, ch. 65, in effect Mch. 25, 1912.*)

BLIND.

Persons eligible as pupils to state institutions; support and term of instruction; Education L., §§ 972, 973.

BOARD OF CLAIMS.**Code of Civil Procedure.**

§ 264. **Jurisdiction.**—The board of claims possesses all of the powers and jurisdiction of the former court of claims. It also has jurisdiction to hear and determine a private claim against the state, including a claim of an executor or administrator of a decedent who left him or her surviving a husband, wife or next of kin, for damages for a wrongful act, neglect or default, on the part of the state by which the decedent's death was caused, which shall have accrued within two years before the filing of such claim and the state hereby consents, in all such claims, to have its liability determined. It may also hear and determine any claim on the part of the state against the claimant, or against his assignor at the time of the assignment; and must render judgment for such sum as should be paid by or to the state. But the board has no jurisdiction of a claim submitted by law to any other tribunal or officer for audit or determination except where the claim is founded upon express contract and such claim, or some part thereof, has been rejected by such tribunal or officer. In no case shall any liability be implied against the state, and no award shall be made on any claim against the state except upon such legal evidence as would establish liability against an individual or corporation in a court of law or equity. No claim other than for the appropriation of land shall be maintained against the state unless the claimant shall within six months after such claim shall have accrued, file in the office of the clerk of the board of claims and with the attorney-general a written notice of intention to file a claim against the state, stating the time when, and the place where such claim arose and in detail the nature of the same, which notice shall be signed and verified by the claimant before an officer authorized to administer oaths. The attorney-general may require any person filing such a notice of claim for any cause whatever against the state to be sworn before him or one of his deputies designated by him for that purpose within the county of the claimant's residence, relating to such claim, and when so sworn to answer orally as to any facts relative to the justness of such claim. Willful false swearing before the attorney-general or deputy attorney-general is perjury and punishable as such. Provided further, that nothing herein contained shall be construed to allow the board to hear any claim which as between citizens of the state would be barred by lapse of time or of any claim heretofore accrued and of which the said court or board has had jurisdiction and which was barred by lapse of time at the date when this section, as amended, takes effect. Provided further, that the board shall have jurisdiction, and may hear and determine all claims accrued and actually filed at any time prior to the time that this section, as amended, takes effect, and filed within two years from the time they accrued, though no notice of intention to file was given, as required by

this section, if such claims when filed were not barred by lapse of time and the court or board had jurisdiction and authority to hear and determine the same except for the lack of such notice; and such jurisdiction shall attach without refiling or previous notice. (*Amended by L. 1912, ch. 545, in effect Sept. 1, 1912.*)

BRONX COUNTY.

Erected; See Counties.

BUSINESS CORPORATIONS LAW.

(L. 1909, ch. 12.)

§ 2. Incorporation.

Object of incorporation.—A corporation may not be incorporated for the purpose of engaging in the practice of dentistry and dental surgery under the Business Corporations Law. Rept. of Atty. Genl. (1911), Vol. 2, p. 567.

Acknowledgment of certificate.—The Secretary of State is not authorized to file the certificate of incorporation of a business corporation where the execution of it by the incorporators is proved by a subscribing witness and not by acknowledgment. Rept. of Atty. Genl. (1911), Vol. 2, p. 651.

CANAL IMPROVEMENTS.

L. 1910, ch. 66, § 2, Bonds for barge canal (B. C. & G.'s Consol. L. Vol. 7, p. 88), amended by L. 1912, ch. 186, in effect Apr. 5, 1912, as follows:

§ 2. The comptroller is hereby directed, under the supervision of the commissioners of the canal fund, to cause to be prepared the bonds of this state in an aggregate amount not to exceed seventy-eight million dollars, said bonds to bear interest at a rate not to exceed four per centum per annum, which interest except as provided in this section shall be payable semi-annually in the city of New York. When the comptroller so determines, the whole or any part of an issue of such bonds, or the interest due thereon, may be made payable in the currency of a country other than the United States, and such interest be made payable semi-annually at a place other than in the city of New York, as the comptroller may determine. The proceeds of sale of such bonds shall be entered in the books of the comptroller's office in the terms of the currency of the United States as well as in the terms of the foreign currency in which such bonds shall have been issued. Said bonds shall be issued to run for a period of fifty years, and shall not be sold for less than par. The comptroller is hereby charged with the duty of selling said bonds to the highest bidder after advertising for a period of twenty consecutive days, exclusive of Sundays and holidays, in at least two daily papers, one printed in the city of New York, and one in the city of Albany. Said advertisements shall contain a provision to the effect that the comptroller may reject any or all bids made in pursuance of said advertisements, and in the event of such rejection, the comptroller is authorized to readvertise for bids in the manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. The said bonds shall not all be sold at one time, but they shall be sold in lots as the proceeds thereof may be required to prosecute the work of the said improvements of the canals. There is hereby imposed a direct annual tax to pay and sufficient to pay the interest on each bond issued under this act as it falls due, and to pay and sufficient to pay and discharge the principal of each of such bonds within fifty years

L. 1912, ch. 9.

Barge canal operation.

§ 1.

from the date thereof. The rate of such annual tax shall be five one-thousandths of a mill on each dollar of valuation of real and personal property in this state subject to taxation, for each and every one million dollars, or fraction thereof, in par value of said bonds issued under this act, and outstanding or to be outstanding during the fiscal year during which the amount of such tax is computed. The legislature shall each year compute the amount of tax required as above specified, and in making such computation shall include, at the rate above mentioned, such bonds as will be required to be issued under this act during the fiscal year for which the amount of such tax is so computed. The tax imposed, as herein provided, shall be assessed, levied and collected in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of the state. The proceeds of such tax shall be invested by the comptroller under the direction of the commissioners of the canal fund and together with the interest arising therefrom, any premiums received on the sale of said bonds, and interest accruing on deposits of money received from the sale of said bonds, or from miscellaneous sources, shall constitute a sinking fund, which is hereby created. Said fund shall be used solely for the purpose of paying the principal and interest of bonds issued in accordance with the provisions of this act. Provided, however, that in case the legislature shall set apart in any fiscal year moneys in the state treasury as a sinking fund to pay the interest on the said bonds as it falls due and to pay and discharge the principal thereof, and such moneys shall be sufficient to provide a sum equal to the amount that would otherwise have been raised, as hereinbefore provided, in such fiscal year for such sinking fund, a direct annual tax for such year shall not be imposed and collected as required by the provisions of this act. (*Amended by L. 1912, ch. 186, in effect Apr., 5, 1912.*)

L. 1912, ch. 9.—An act to provide for the creation of a commission on barge canal operation, to inquire into the subject of the proper methods to be applied in the operation and maintenance of the enlarged canals, and to report thereon, to inquire into and report on the subject of the type or style of craft properly suited to the navigation of the said enlarged canals, and to recommend as to what statutory changes may be necessary to the proper operation, maintenance and repair of said enlarged canals, and making an appropriation to meet the expenses of such commission. (*In effect Feb. 28, 1912.*)

Section 1. A commission, to consist of five persons, of which the state engineer and surveyor and superintendent of public works, holding office at the time this act shall take effect, shall be members, the remaining three members to be appointed by the governor from among persons who shall have had executive experience in the administration of the canals of this state, is hereby created. It shall be the duty of said commission to inquire into the subject as to the rules and regulations which should govern the operation of the canals of this state when they shall have been improved, as authorized by the provisions of chapter one hundred and forty-seven

of the laws of nineteen hundred and three, and chapter three hundred and ninety-one of the laws of nineteen hundred and nine, and the acts amendatory thereof and supplemental thereto, and the operation of the terminals or improvements authorized to be constructed under the provisions of chapter seven hundred and forty-six of the laws of nineteen hundred and eleven, when the same shall have been placed in commission. It shall be the duty of said commission to make a study of the question as to the proper organization of forces to be employed in connection with the maintenance, operation and repairs of the said enlarged and improved canals, and also to make inquiry into the subject as to what type or style of craft or boat may be best adapted to the commercial navigation of the said canals, and further to make a study of existing statutes governing the maintenance, operation, repair and navigation of the canals and to report its recommendations as to any modification or repeal of existing statutes, or as to the enactment of any new statutes which as a result of the study and inquiry herein authorized, may be deemed by said commission as necessary or desirable, to the end that said canals and terminals may be properly operated and maintained, and made to perform in the most satisfactory manner the functions and purposes for which they have been designed and are being constructed and provided; and to the end further that commerce upon the canals may be encouraged, fostered and protected, and that the interests of the state may be protected by the application of all economies consistent with the performance by the canals and their terminals, of their full and proper functions. To the end that a full and most careful inquiry may be made, the said commission shall be given access to all public records which may have a bearing on the subject or subjects under consideration, and it shall have authority to collect data relating to the care, maintenance and operation of other waterways outside this state, and to make such examinations and inspections as may be deemed desirable to the proper discharge of the duties herein imposed. The said commission shall make report to the legislature of the result of the study and inquiry herein authorized, together with its recommendations, not later than the first day of February, nineteen hundred and thirteen.

§ 2. The members of the commission hereby created shall serve without compensation other than their actual and necessary traveling expenses, excepting that in the event the said commission shall select one of its members to perform the duties of secretary to said commission, said commissioner-secretary shall receive a compensation to be fixed by the said commission.

§ 3. For the purpose of carrying out the provisions of this act, the sum of ten thousand dollars (\$10,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated.

L. 1903, ch. 147.

Barge canal.

§§ 3, 4.

L. 1912, ch. 282.—An act to expedite the work of improving the Oswego canal by providing for a suspension of navigation during a portion of the season of nineteen hundred and twelve. (*In effect Apr. 11, 1912.*)

Section 1. The superintendent of public works is hereby authorized to close to navigation that portion of the Oswego canal between lock eleven at Fulton and Lake Ontario, during the season of navigation of nineteen hundred and twelve, to and including July tenth, nineteen hundred and twelve, if in his judgment the progress of construction work on the barge canal will be enhanced by such closing; provided that nothing herein contained shall be deemed to permit the closing of the said canal, or any part thereof, during any other year than that herein named.

§ 2. All conflicting acts or parts of acts are hereby repealed to the extent that they may be in conflict herewith.

Barge Canal

L. 1903, ch. 147.—An act making provision for issuing bonds to the amount of not to exceed one hundred and one million dollars for the improvement of the Erie canal, the Oswego canal and the Champlain canal, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and three.

§ 3. Routes; depth; locks; bridges.—(B. C. & G.'s Consol. Laws, p. 522.)

This section applies to railroad bridges as well as to highway bridges. It was the intention of the Legislature in passing the Barge Canal Act to provide that railroads required to change their bridges to accommodate such canal should be reimbursed by the State for such costs and expense, and the State officials and contractors will be enjoined from interfering with plaintiff's bridge across the Seneca river without making compensation for all damages and expenses incurred by plaintiff in raising the bridge and making it conform to the Barge Canal Act. *Lehigh Valley R. R. Co. v. Canal Board* (1911), 146 App. Div. 151, 130 N. Y. Supp. 978, modfd. 204 N. Y. 471.

Injunction restraining interference with railroad bridge.—A railroad company is entitled to a judgment restraining the state from raising, trespassing upon or interfering with a railroad bridge over a stream used for and in the construction and improvement of the barge canal unless either the state constructs a new bridge and approaches thereto or appropriates for the canal the bridge and its approaches in the manner prescribed by the statute (L. 1903, ch. 147, § 4). The company is not entitled, however, to be compensated for loss or damage by interference with its business in the conduct of its railroad caused by the proper or necessary substitution of the new bridge for the old, or to compensation in advance of the appropriation or disturbance of the bridge, and a judgment providing for such compensation is erroneous and should be modified to conform with the statute. *Lehigh Valley R. R. Co. v. Canal Board* (1912), 204 N. Y. 471, modfg. 146 App. Div. 151, 130 N. Y. Supp. 978.

§ 4. Acquisition of land.—(B. C. & G.'s Consol. Laws, p. 526.)

Appropriation of telephone lines.—Where a public highway upon which the poles and wires of a telephone company are lawfully located is appropriated, pursuant to this section for the purpose of the construction of a reservoir, thereby necessitating the removal of such poles and wires, the telephone company is entitled to compensation. The Canal Board may lawfully adjust such claim by providing the

§§ 5-a, 6.

Barge canal.

L. 1903, ch. 147.

telephone company with a right-of-way over other portions of the appropriated parcel and reimbursing it for the necessary expenses incident to such removal. Rept. of Atty. Genl., Feb. 6, 1912.

§ 5-a. When compensation shall be exacted for crossing new routes.—(B. C. & G.'s Consol. Laws, p. 528.)

This section means that a corporation whose line crosses a canal which is to be abandoned and also the new canal, shall receive compensation "on account of the expense of constructing" a new bridge for its use in crossing the new route. *Lehigh Valley R. R. Co. v. Canal Board* (1911), 146 App. Div. 151, 130 N. Y. Supp. 978, modfd. 204 N. Y. 471.

§ 6. Contracts.—(B. C. & G.'s Consol. Laws, p. 528.)

—Appropriation of land, alteration of maps.—Although the Barge Canal Act authorizes the State Engineer to appropriate lands for the use of the improved canals and for the purpose of construction, and to make a map of the lands to be appropriated to be filed with the Superintendent of Public Works, a determination made in good faith as to the necessity for the appropriation of lands, and the exercise of a sound discretion, are conditions precedent to his right to condemn. Where the original map of the barge canal as made by the State Engineer did not appropriate certain adjoining lands, the State Engineer had no authority subsequently to alter the map so as to appropriate the lands without the approval of the Superintendent of Public Works, as required by this section, nor without the consent of the Canal Board, where the change enhanced the cost to the State. *Ontario Knitting Co. v. State of New York* (1911), 147 App. Div. 316, 131 N. Y. Supp. 918.

CANAL LAW.

(L. 1909, ch. 13.)

§ 5. Copies of maps and field-notes in county clerk's office.

See *Goring v. American Pipe & Construction Co.* (1911), 74 Misc. 570.

§ 47. Claims for damages.

In the improvement of the navigation of the Mohawk river, the State may not, by building a coffer-dam, set back the water and ice upon the lands of a riparian owner above, and, having done so, is liable for the damages caused thereby. The State cannot escape liability on the ground that the work was done by an independent contractor. *Haselo v. State of New York* (1911), 73 Misc. 532, 131 N. Y. Supp. 26.

CANALS.

L. 1912, ch. 506.—An act to authorize and direct the superintendent of public works to increase the rate of wages of all locktenders on the several canals of this state, and making an appropriation therefor. (*In effect Apr. 18, 1912.*)

Section 1. The superintendent of public works is hereby authorized and directed to increase the rate of wages or compensation to be paid to all locktenders employed on the several canals of this state during the season of nineteen hundred and twelve to such extent as that the rate of wages for such locktenders for the season of nineteen hundred and twelve shall exceed the rate of wages paid to such locktenders during the season of nineteen hundred and eleven by the sum of five dollars per month for each such locktender.

§ 2. For the purpose of carrying into effect the provisions of section one of this act, the sum of twenty-four thousand dollars (\$24,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, such moneys to be paid by the treasurer on the warrant of the comptroller to the order of the superintendent of public works, and such moneys to be in addition to the funds provided in chapter eight hundred and ten of the laws of nineteen hundred and eleven for the payment of the expenses of locktending and the ordinary repairs of the canals for the fiscal year beginning October first, nineteen hundred and eleven.

CEMETERIES.

See *Membership Corporations L.*, §§ 64-85.

CITY COURT OF NEW YORK.**Code of Civil Procedure.**

§ 328. Clerk, deputy clerk, assistants, stenographers, and typewriter operators.—The court has a clerk who is appointed, and may be removed, by the

Code Civ. Pro. §§ 335, 339-a.

Attendants, etc.

L. 1912, chs. 465, 515.

justices thereof, or a majority of them for cause upon charges and after a hearing after notice, and who shall receive a salary of six thousand dollars per annum. The justices of the court or a majority of them must appoint, and may remove, six deputy clerks and not more than twenty-one assistants, and a stenographer and typewriter operator for the purpose of copying their minutes and opinions and doing such other confidential work which may be required by said justices or the clerk of the court. The clerk is responsible for the faithful discharge of his duty by each deputy clerk, and each assistant and the stenographer and typewriter operator. Each deputy clerk, each assistant and the stenographer and typewriter operator, is entitled to a salary, fixed and to be paid as prescribed by law. (*Amended by L. 1912, ch. 466, in effect Sept. 1, 1912.*)

§ 335. **The justices must appoint attendants.**—The justices of the court or a majority of them must appoint, and may at pleasure remove, as many attendants upon the court as they deem necessary, not exceeding twenty-five. The justices of the court, or a majority of them, may regulate their attendance. Each attendant is entitled to a salary fixed, and to be paid as prescribed by law. (*Amended by L. 1912, ch. 465, in effect Sept. 1, 1912.*) 1912.)

§ 339-a. **Destruction of useless records.**—The justices of the city court, or a majority of them, may, upon petition of the clerk of such court, by order made at any term thereof, direct the clerk of the court to destroy any records or papers deposited or filed in his office which the justices of the court or a majority of them conclude to be no longer necessary for any purpose whatsoever. (*Added by L. 1912, ch. 515, in effect Sept. 1, 1912.*)

CIVIL RIGHTS LAW.

(L. 1909, ch. 14.)

§ 50. Right of privacy.

The statute was intended to prevent the unauthorized use of another's portrait for advertising purposes or purposes of trade, and made the written consent of the person whose portrait was used for such purposes evidence of that authority; but it never was meant that an employee could fraudulently, or by his culpable negligence amounting to constructive fraud, mislead his employer into expenditures to build up his trade and thereafter claim the intervention of a court of equity where such intervention would visit a material injury upon the employer. Where one who is in another's employ voluntarily poses for a portrait to be used in his master's business, he may not, after the latter has incurred expenses in the use thereof to build up his business, maintain an action upon the termination of the employment, under this section, to restrain the further use of the portrait for advertising purposes. *Wendell v. Conduit Machine Co.* (1911), 74 Misc. 202, 132 N. Y. Supp. 428.

§ 51. Action for injunction and for damages.

Separate action for libel unauthorized.—A plaintiff, who has been injured by the unauthorized use of his name and a portrait stated to be his by an exhibitor of moving pictures contrary to this section, and who alleges that he has been held up to public ridicule, must recover all his damages in that action. He cannot maintain a separate action for libel based on the same facts. *Binns v. Vitagraph Co.* (1911), 147 App. Div. 783.

Exemplary damages may be recovered in such action, and are within the discretion of the jury. Where the plaintiff, a wireless telegrapher, had performed acts of great heroism by remaining at his post during a collision between steamships at sea, in which many lives were imperilled, and had refused to allow himself to be publicly exploited as a hero, but the defendant employed an actor to impersonate the plaintiff in scenes representing the disaster, and exhibited photographs so obtained as moving pictures, showing the person representing the plaintiff in ludicrous attitudes, etc., a verdict of \$12,000 is not excessive. *Binns v. Vitagraph Co.* (1911), 147 App. Div. 783.

CIVIL SERVICE.

L. 1912, ch. 144.—An act granting a leave of absence in the year nineteen hundred and thirteen to veterans in the civil service, in commemoration of the fiftieth anniversary of the battle of Gettysburg. (*In effect Apr. 4, 1913.*)

Section 1. Every honorably discharged soldier, sailor or marine from the army or navy of the United States in the late Civil War holding a position or employment in the civil service of the state, or of any city, county, town or village therein, shall be entitled to a leave of absence with full pay for a term beginning July first, nineteen hundred and thirteen, and ending July seventh, nineteen hundred and thirteen, in commemoration of the fiftieth anniversary of the battle of Gettysburg. Such leave of absence shall be in addition to any other regular vacation to which any such soldier, sailor or marine shall be entitled.

CIVIL SERVICE LAW.

(L. 1909, ch. 15.)

§ 9. Unclassified service; classified service.

The teaching staffs of the State Schools of Agriculture at Alfred University, at Morrisville, Madison county, and at St. Lawrence University, are in the unclassified service as defined by this section. Other employees in such schools paid by the State are in the classified service. Rept. of Atty. Genl., Feb. 23, 1912.

§ 10. Rules for the classified state service.

The determination of a civil service commission in classifying positions in the public service, although involving the exercise of judgment and discretion, is more of a legislative or executive character than judicial or quasi-judicial. Its action in making classifications is subject to a judicial control that is limited to such questions as may properly be reviewed in proceedings instituted by writ of mandamus. *Matter of Simmons v. McGuire* (1912), 204 N. Y. 253, following *People ex rel. Schau v. McWilliams*, 185 N. Y. 92.

The classification of positions by the Civil Service Commission will not be disturbed by the courts unless the action of the Commission appears to be palpably illegal. *People ex rel. Merritt v. Kraft* (1911), 145 App. Div. 662, 130 N. Y. Supp. 363.

A writ of mandamus will not be granted requiring the State Civil Service Commission to reclassify the position of court stenographer, taking it from the competitive class and placing it in the exempt class, upon the ground that a competitive examination is not practicable. *People ex rel. Weatherly v. Milliken* (1911), 72 Misc. 430, 130 N. Y. Supp. 1.

The court will not issue a peremptory writ of mandamus to the State Civil Service Commissioners commanding them to rescind their action in changing the position of transfer tax appraisers from the competitive class to the exempt class, where the resolution of the Commission has not been approved or disapproved by the Governor, approval being necessary to make the resolution operative. *Matter of Weeks v. Kraft* (1911), 147 App. Div. 403, 132 N. Y. Supp. 228.

§ 13. The exempt class.—*Subdivision 2, amended by L. 1912, ch. 170, in effect Apr. 4, 1912, as follows:*

2. One secretary of each officer, board and commission, except civil service commissions, authorized by law to appoint a secretary;

Confidential positions are as a matter of law, exempt from examinations, not by force of express statute, but because the courts in construing the provisions of section 9, article 5, of the Constitution, have so held. *Simons v. McGuire* (1911), 145 App. Div. 471, 130 N. Y. Supp. 306.

§ 14. The competitive class.

Probation officer.—It cannot be held as a matter of law that the position of probation officer, under section 96 of chapter 659 of the Laws of 1910, is one which cannot be properly placed in the competitive class of the civil service, and for that reason the question must be left to the decision of the Civil Service Commission. The use of the word "confidential," as used in the statute, is not controlling. Effect of amendment in one house of bill originating in another, by substituting word "confidential" for "exempt," considered with reference to construction of the statute. *Matter of Simmons v. McGuire* (1912), 204 N. Y. 253.

L. 1909, ch. 15.

Power of removal limited.

§§ 16, 20, 22.

The position of transfer tax appraiser, is one for which a competitive examination is practicable. *Matter of Weeks v. Kraft* (1911), 72 Misc. 134, 129 N. Y. Supp. 690.

Eligible lists.—Where an office is placed in the competitive class by the civil service, one who has not filled the position continuously can be appointed only from an eligible list unless he comes within one of the exceptions provided for in the rules. *Matter of Nanmack* (1911), 145 App. Div. 289, 130 N. Y. Supp. 211.

§ 16. Promotion; transfer; reinstatement; reduction.

Promotion.—Where the board of water supply of the city of New York increased the salary of an engineer from \$2,000 to \$2,400 per annum, stating in its notice that the engineer was promoted from one grade to another, and the increase actually brought him into a higher grade under the classification of the municipal civil service commission, there was a "promotion" within the meaning of this section, and the engineer is not entitled to a writ of mandamus commanding the civil service commissioners to certify him on the payrolls at the increased salary. *People ex rel. Holleran v. Creelman* (1911), 148 App. Div. 121.

§ 20. Disbursing officers.

Mandamus will not lie to compel a public officer to perform a duty not imposed upon him by law. Thus, it will not lie to compel the commissioner of water supply, gas and electricity of the city of New York to certify to the municipal civil service commission payrolls covering the salary of a telephone operator in his department. The only certification of such payrolls required by law is that of the municipal civil service commission. *People ex rel. Jones v. Thompson* (1911), 147 App. Div. 150, 132 N. Y. Supp. 215.

§ 22. Power of removal limited.

Discharge of veterans.—An honorably discharged soldier appointed from a civil service list as a special agent in the Department of Excise, who for fifteen years has faithfully discharged the duties of the position, no charge of misconduct having been preferred against him, cannot be summarily discharged from his position, even though it be a confidential one. *Matter of Weaver* (1911), 72 Misc. 438, 131 N. Y. Supp. 144.

Discharge of other employees to make room for veterans.—In the absence of express statutory direction, a public officer is not required to discharge other competent employees to make room for a veteran, when the funds available for the payment of his wages have been exhausted. *Cottam v. City of New York* (1911), 74 Misc. 68.

Abolishment and creation of new position.—If the position of paymaster in the State Department of Public Buildings, held by a veteran fireman, is abolished in bad faith and not in the interest of economy, the veteran fireman is entitled to be restored; if the position is abolished in good faith and the duties of a position created are similar to the position of those of the position abolished, the veteran is entitled to a transfer to such position. *Matter of Hay* (1911), 72 Misc. 434, 130 N. Y. 337.

Discharge for economic reasons.—Where a person dismissed from a position in the classified competitive civil service of the city of New York has petitioned for a peremptory writ of mandamus to compel his reinstatement upon the ground that, although his discharge was stated to have been made in the interests of a more economical administration of the department and in conformity with the budget allowance for the year, there was, nevertheless, a sufficient sum appropriated to pay him and other employees, he is entitled, on subsequently discovering that the head of his department has appointed a person in the exempt class to perform the same duties at a larger salary and avers that such appointment was for political

§§ 25, 28.

Taxpayer's action.

L. 1909, ch. 15.

reasons in violation of the statute, to have his affidavits setting forth said facts made part of his moving papers. The head of the department should then be given time to answer. *People ex rel. Schott v. Prendergast* (1911), 148 App. Div. 135.

Exemption of firemen.—*Matter of Cooper v. Paris* (1911), 73 Misc. 244, 130 N. Y. Supp. 1043.

Where relator, an exempt volunteer fireman, was temporarily employed by the court-house committee of the board of supervisors first as a fireman and later as assistant engineer in the power plant of the court-house building, a position in the competitive class of the classified service, before an eligible list was made, he is not entitled to the protection of this section and may be displaced by the appointment of another from an eligible list thereafter furnished the board of supervisors by the State Civil Service Commission. *Matter of Faulkner v. Board of Supervisors* (1911), 74 Misc. 502, 131 N. Y. Supp. 998.

A veteran volunteer fireman has a right to a hearing before removal, but, upon the completion of the work he was employed to do, he may be dismissed. *Cottam v. City of New York* (1911), 74 Misc. 67, 131 N. Y. Supp. 617.

Five consecutive years' service is intended to have been completed by persons invoking the protection of this section. *Matter of Cooper v. Paris* (1911), 73 Misc. 244, 130 N. Y. Supp. 1043.

A reinstatement under the civil services rules cannot be made within one year from the date when the person left the service. *Matter of Nanmack* (1911), 145 App. Div. 289, 130 N. Y. Supp. 211.

Reinstatement of veteran.—The refusal of the State Civil Service Commission to place the position of special agent of the Department of Excise in the non-competitive class is not so palpably erroneous as to justify the Appellate Division in interfering therewith, and consequently where the State Commissioner of Excise has assumed to dismiss summarily an incumbent of that position who is a veteran, a peremptory writ of mandamus will issue to compel the Commissioner of Excise to reinstate him. *People ex rel. Weaver v. Farley* (1911), 147 App. Div. 420, 131 N. Y. Supp. 93, following 145 App. Div. 662, 130 N. Y. Supp. 363.

§ 25. Recommendations for appointment or promotion.

Application.—The provision of this section that no recommendation or question under the authority of the statute shall relate to the political opinions or affiliations of any person and that no appointment or selection to or removal from an office shall be in any manner affected or influenced by such opinions or affiliations, does not apply to one holding a position in the exempt class. Hence, where such person has been removed, he is not entitled to mandamus to compel his reinstatement upon the ground that he was removed for political reasons. Where a person holding a position in the exempt class is dismissed from office, the statute does not entitle the jury to determine on the trial of the issues raised by the return to an alternative writ of mandamus whether he was removed because of political affiliations. *People ex rel. Garvey v. Prendergast* (1911), 148 App. Div. 129.

§ 28. Taxpayer's action.

A taxpayer's action is inappropriate as a remedy for correcting illegal action on the part of civil service commissioners. The official acts of the commission in executing the commands of the statute are not judicial, in the technical sense; they are executive and ministerial in their nature, and, therefore, are to be reached, when they become the subject of judicial inquiry, by way of the writ of mandamus. Thus, an action will not lie to restrain municipal civil service commissioners from recognizing and enforcing an amendment of the civil service rules which they had proposed and had caused to be duly approved. *Slavin v. McGuire* (1912), 205 N. Y. 84, affg. 144 App. Div. 910.

L. 1912, ch. 393.

Code revision.

§§ 1-3.

§ 43. Extra salary or compensation.

Extra compensation.—The State Civil Service Law does not prohibit the payment of extra compensation to designers, draughtsmen, tracers and engineers in the office of the State Architect for working overtime in the preparation of plans and specifications in the reconstruction of the capitol. Rept. of Atty. Genl. (1911), Vol. 2, p. 602.

CLAIMS.

See Board of Claims.

CODE REVISION.

L. 1912, ch. 393.—An act authorizing the board of statutory consolidation to examine and report a plan for the classification, consolidation and simplification of the civil practice in the courts of this State. (*In effect Apr. 16, 1912.*)

§ 1. Board to revise civil practice.—The board of statutory consolidation created by the laws of nineteen hundred and four, chapter six hundred and sixty-four, consisting of Adolph J. Rodenbeck, William B. Hornblower, John G. Milburn and Adelbert Moot, together with Charles A. Collin who is hereby appointed to fill the vacancy existing in said board, or such other persons as may be appointed by the governor in the case of other vacancies, is hereby continued and directed to report to the next legislature a plan for the classification, consolidation and simplification of the civil practice in the courts of this state.

§ 2. Powers and duties.—The board shall have power to conduct such inquiries as it may deem necessary to the preparation of such report, and to hold sessions in Albany or elsewhere in this state. The members of the board shall serve without compensation but shall receive their necessary expenses and disbursements incurred in the discharge of their duties to be paid, together with the compensation of persons employed by the board and the other expenses and disbursements of the board, by the comptroller out of any moneys herein appropriated upon the certificate of the chairman of the board. The board shall distribute copies of its work to the members of the legislature, judges of the courts and such other persons as it may see fit for the purpose of securing their suggestions and advice. The necessary printing of the board shall be done by the state printer and payment therefor shall then be made out of the appropriation for legislative printing.

§ 3. Appropriation.—The sum of five thousand dollars (\$5,000), or so much thereof as may be necessary, is hereby appropriated for the purpose of this act, out of any moneys in the treasury not otherwise appropriated, to be expended as above provided.

COMMISSIONERS OF DEEDS.

See Notaries Public.

Cross-references.

CONCENTRATED COMMERCIAL FEEDING STUFFS.

Defined; **Agricultural L.**, § 160.

CONNECTICUT.

Boundary described; **State L.**, § 2.

CONSERVATION LAW.

(L. 1911, ch. 647.)

§ 3. Office and official force.—The commission shall have its principal office in the city of Albany. The commission shall appoint a secretary to the commission who shall hold office during the pleasure of the commission and who shall receive an annual salary of five thousand dollars and shall have reimbursed to him all actual and necessary traveling and other expenses and disbursements incurred or made by him in the discharge of his official duties. The commission shall appoint a chief engineer, who shall hold office during the pleasure of the commission and who shall receive an annual salary of seven thousand dollars and shall have reimbursed to him all actual and necessary traveling and other expenses incurred or made by him in the discharge of his official duties. The commission shall appoint a counsel to the commission who shall be an attorney and counsellor-at-law of the state and who shall hold office during the pleasure of the commission and who shall receive an annual salary of seven thousand dollars and shall have reimbursed to him all actual and necessary traveling and other expenses and disbursements incurred or made by him in the discharge of his official duties. The commission shall appoint three deputy commissioners, who shall each hold office during the pleasure of the commission and who shall receive an annual salary of three thousand five hundred dollars and shall have reimbursed to him all actual and necessary traveling and other expenses and disbursements incurred or made by him in the discharge of his official duties. The commission shall appoint such engineers, clerks and other employees as shall be authorized as follows: The commission shall, on or before the first day of September in the year nineteen hundred and eleven and thereafter on or before the first day of February annually, submit in writing to the governor a list of all positions in the department not herein expressly provided for, deemed necessary for the conduct of the work of the department, specifying the salaries and compensation deemed necessary and reasonable for each position and, when approved by the governor and filed in the office of the comptroller, the same shall be established and fixed as so approved and no additional positions shall be created and no such salaries and compensation shall be increased except by the approval of the governor in writing so filed. Each commissioner and deputy and the secretary shall execute and file with the comptroller a bond to the people of the state in the sum of ten thousand dollars, with sureties to be approved by the comptroller, conditioned for the faithful performance of his duties, and that he will account for and pay over pursuant to the law all moneys received by him. (*Amended by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 9. Suits and prosecutions.—It shall be the duty of the attorney-general, when requested by the commission, to appoint a deputy attorney-general,

and such assistants as may be necessary, and assign them to the legal department of the commission. The deputy attorney-general shall receive an annual salary of five thousand five hundred dollars. The salaries of the assistants shall be fixed by the commission. It shall be the duty of such deputy, in the name of the attorney-general, to conduct all prosecutions for penalties imposed by the forest, fish and game law or by this act, and to bring all actions, suits and proceedings which the commission shall be authorized to institute and maintain, and to defend all actions, suits and proceedings brought against the commission. No action, suit or proceeding in which the title to lands of the state in forest preserve counties shall be involved shall be withdrawn or discontinued, nor shall judgment therein against the state be entered on consent except on special permission of the court and after application made in open court, on which application all the terms and conditions of the settlement shall be fully stated in writing and the reasons therefor set forth at length. (*Amended by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

Settlement of claims to lands in the forest preserve.—The authority conferred upon the Forest, Fish and Game Commissioner by section 20 of chapter 220 of the Laws of 1897, as amended by section 20 of chapter 135 of the Laws of 1898, to institute, prosecute and settle actions to determine the title to lands claimed by the State as part of the forest preserve, extends to a settlement by which the adverse claimants receive the soft wood standing on the lands, with the right to cut and remove it, and the State obtains a release of all further interest in the lands as well as a grant of other neighboring lands to which it made no claim of title; and, in the absence of fraud or collusion, the State is bound by the judgment carrying out such settlement which has been performed on the part of the adverse claimants, although the terms of the settlement had been arranged and agreed upon before the suit was instituted. Such judgment is a bar to a subsequent suit by the State in which it seeks to litigate anew the matters therein determined and procure an adjudication that the statute under which the action was brought and the settlement was made was unconstitutional. *People v. Santa Clara Lumber Co., No. 3 (1911), 74 Misc. 596.*

§ 12. Reports.—The chief executive officer of each division of the department shall annually report to the commission the proceedings thereof with a statement of its financial transactions, and the commission shall annually report to the legislature on or before January fifteenth, with such recommendations as it deems proper, specifying the receipts, expenditures and work of the department for the preceding fiscal year. Such report shall include a brief description of all lands purchased during the year, and statistics of various fires, and any trespass upon state lands, and a brief summary of all litigation prosecuted or defended by the commission. It shall be the duty of the commission to publish and distribute for public information reports in which shall be briefly set forth the work of the department and of its several divisions. (*Amended by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 26. Actions for penalties.—Actions for penalties for violations of any provision of this chapter shall be in the name of the "People of the State

of New York;" and must be brought on the order of the commission, and may be compromised, settled and discontinued as provided in section nine of this chapter. Such actions, if in justices' courts, may be brought in any town of the county in which the penalty is incurred, or, if the defendant resides in another county, in any town of the county in which the defendant resides. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 27. **Costs in actions by the people.**—In case of recovery of any amount in an action brought for a penalty under this chapter or in any action authorized by this chapter, the people shall be entitled to recover full costs, and at the rates as provided for by sections thirty-two hundred and twenty-eight and thirty-two hundred and fifty-one of the code of civil procedure, together with witnesses' fees and other disbursements. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 28. **Judgments; how enforced.**—Judgments recovered under this chapter may be enforced by execution against the person as provided by the code of civil procedure. A person taken into custody upon such an execution shall not be admitted to the liberties of the jail and shall be confined for not less than one day, and at the rate of one day for each dollar of the amount of the judgment recovered. No person shall be imprisoned more than once, or for more than six months on the same judgment. Imprisonment shall not operate to satisfy a judgment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 29. **Proceeds of actions under article five—moieties.**—Moneys received in an action for a penalty brought under article five of this chapter, or upon the settlement or compromise thereof, and fines for violations of any of the provisions of said article shall be paid to the commission, which shall apply so much thereof as may be necessary to the payment of the expenses of collection and shall pay one-half of the balance, in cases brought by special game protectors, to the special game protector upon whose information the action was brought. Regular protectors shall not receive moieties. The commission in its discretion may settle or compromise any action to recover any penalty provided for in said articles, or a cause of action therefor, at such sum as it deems advantageous to the state. The commission may, out of moneys arising from such fines or penalties, pay the fees of magistrates and constables for services performed in criminal actions brought upon information of a game protector, district forest ranger, forest ranger or firewarden. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 30. **Proceeds of actions under article four.**—Moneys received in actions for penalties brought under article four of this chapter shall be paid to the commission, who shall apply so much thereof as may be necessary to the payment of the expenses of collections. The balance of such receipts shall be available for enforcing the various provisions of law for the protection

§§ 31-35.

Misdemeanors; search warrants.

L. 1912, ch. 444.

of forests against fire. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 31. **Jurisdiction of courts in criminal cases.**—Subject to the power of removal provided in the code of criminal procedure, courts of special sessions and police courts shall have, in the first instance, jurisdiction of offenses committed under this chapter, within their respective counties. A warrant shall be returnable before the magistrate issuing the same. And, for the purpose of this chapter only, the jurisdiction of the courts mentioned in this section is extended as to misdemeanors to permit the imposition of the fines and sentences authorized by this chapter. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 32. **Punishment for misdemeanor.**—A person convicted of a misdemeanor under this chapter shall, except as otherwise provided herein, be punished by a fine of not less than ten dollars nor more than one hundred dollars; or by imprisonment in the county jail or penitentiary for not less than one day, nor more than one day for every dollar of such fine, or by both such fine and imprisonment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 33. **Rules and regulations; violations of, a misdemeanor.**—Rules and regulations established by the commission for the enforcement of the provisions of article four of this chapter shall be entered by the commission in its book of minutes and at least three copies thereof posted in public places in the towns in which such rules and regulations apply, at least thirty days before the same shall take effect.

Any person who violates any provision of any rule or regulation so established by the commission, pursuant to the provisions of this section, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed one hundred dollars or imprisonment for not more than thirty days or by both such fine and imprisonment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 34. **Search warrants; when issued.**—Any justice of the peace, police justice, county judge, judge of a city court or magistrate having criminal jurisdiction shall, if it appear probable that fish, birds or game taken or possessed contrary to the provisions of article five of this chapter are concealed, issue a search warrant for the discovery thereof, in accordance with the practice provided in title two of part six of the code of criminal procedure, so far as the same are applicable thereto. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 35. **Witnesses not excused from testifying.**—No person shall be excused from testifying or producing any books, papers or other documents in any civil or criminal action, or proceeding taken or had under this chapter, upon the ground that his testimony might tend to convict him of a crime, or to subject him to a penalty or forfeiture. But no person shall be prosecuted, punished or subjected to any penalty or forfeiture for

or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or proceedings; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained is intended to give, or shall be construed as in any manner giving, unto any corporation, immunity of any kind. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

ARTICLE IV.

[Former article 4, §§ 50 and 51, repealed, and new article 4 inserted by L. 1912, ch. 444, in effect Apr. 16, 1912.]

LANDS, FORESTS AND PUBLIC PARKS.

- Section 50. Forest preserve.
51. Adirondack park.
52. Catskill park.
53. Saint Lawrence reservation.
54. John Brown farm.
55. General powers of commission as to lands, forests and parks.
56. Inspection of public parks and reservations.
57. Visitation and inspection.
58. Powers and duties of commission on inspections.
59. Recommendations to State institutions.
60. Superintendent of forests, assistant superintendent of forests and foresters.
61. Forest pathologist.
62. Powers of commission in reforestation.
63. Trespass on State lands.
64. Actions to set aside cancellations and determine title.
65. Right of partition.
66. Appropriation of lands.
67. State engineer and surveyor; description of land appropriated.
68. Service of notice.
69. Manner of service.
70. Description and certificate to be recorded.
71. Adjustment of claims by agreement.
72. Board of claims, jurisdiction of.
73. Board of claims to examine property.
74. Owner may reserve timber on land appropriated.
75. Reservation on lands purchased.
76. Right to reserve timber restricted.
77. Compensation for reserved timber land.
78. Timber reserved, value of land, how determined.
79. Appraisers and their compensation.
80. Adjustment of claims for trespass or other injuries.
81. Perfecting title to lands.
82. Judgments.
83. Warrants.
84. Interest.

| §§ 50, 51. | Lands, forests and public parks. | L. 1912, ch. 444. |
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| Section | 85. Costs and disbursements; when offer made. 86. Deeds, contracts, records; where filed. 87. Removal of timber; use of streams. 88. Examination of private forest lands. 89. Exemption of reforested lands from taxation. 90. Limbs and branches to be lopped. 91. Fire districts; district forest rangers; observation stations. 92. Forest rangers; fire wardens. 93. Special fire wardens. 94. Expenses of fighting fire; how paid. 95. Auditor of fire accounts. 96. Advances for fighting fires. 97. Fires to clear lands in certain towns. 98. Setting fires without permission; felony; damages. 99. Penalties for setting fires. 100. Regulations regarding camps and campfires. 101. Fire patrol by railroads within forest preserve counties. 102. Fire patrol by railroads outside forest preserve counties. 103. Clearing right of way and fire protection devices by railroads in forest lands. 104. Fire inspectors; railroads. 105. Rejection from service of defective engines. 106. Fire protective devices on portable steam sawmills, engines and boilers. 107. Proclamation by governor in times of drouth. 108. Statistics of forest products. 109. Definitions. 110. Laws repealed. 111. Saving clause. 112. When to take effect. | |

§ 50. **Forest preserve.**—The forest preserve shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, except 1, lands within the limits of any village or city, and 2, lands not wild lands acquired by the state on foreclosure of mortgages made to loan commissioners. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 51. **Adirondack park.**—All lands located in the forest preserve counties of the Adirondacks within the following described boundaries, to wit:—Beginning at the southeast corner of the town of Hope in the county of Hamilton, and running thence westerly along the southerly lines of Hamilton county, and continuing and following the southerly line of the town of Wilmurt, in Herkimer county, to the point of intersection with the westerly line of Herkimer county, and thence northerly along the westerly lines of Herkimer county to its junction with the southwesterly line of Saint Lawrence county; thence westerly along said southwesterly line of Saint Lawrence county to the most westerly corner of township fourteen, great tract three, Macomb's purchase; thence easterly along the northerly line

of said township fourteen to the northeast corner thereof; thence northerly along the west line of township thirteen, great tract three, Macomb's purchase, to the northwest corner of said township thirteen; thence east along the north line of said township thirteen and the south line of township ten, tract and purchase aforesaid, to the southwest corner of the southeast quarter of said township ten; thence north along the west line of the said southeast quarter of the aforesaid township ten and the west line of the northeast quarter thereof to the north line of said township; thence east along said north line to the west line of township seven, great tract two, Macomb's purchase; thence northerly along the west line of township seven aforesaid to the northwest corner of the township; thence easterly along the northerly lines of townships seven and eight, great tract two, Macomb's purchase, to the southwest corner of township twelve of said great tract two; thence northerly along the west line of township twelve to the northwest corner of lot one in the south half of said township; thence easterly along the north line of said south half of said township twelve to the west line of the county of Franklin; thence north along the west line of the county of Franklin to the northwest corner of the south half of township thirteen of great tract one, Macomb's purchase; thence easterly along the northerly line of the south half of townships thirteen, fourteen and fifteen of said great tract one, Macomb's purchase, to the west line of the old military tract; thence south along said west line to the northwest corner of township ten of said old military tract; thence easterly along the north line of said township ten to the west line of Clinton county; thence southerly along the west line of Clinton county to the north line of Essex county; thence easterly along the north line of Essex county to the northeast corner of the town of Wilmington; thence along the east and easterly line of the town of Wilmington to the intersection with the north line of the town of Keene; thence east to the northeast corner of said town of Keene; thence southerly along the easterly line of the town of Keene to the southeast corner thereof; thence easterly along the northerly line of the town of North Hudson to the most northeasterly corner of the said town; thence southerly along the easterly lines of the towns of North Hudson and Schroon to the southeast corner of the said town of Schroon; thence westerly along the southerly line of the towns of Schroon and Minerva to the northeasterly corner of Leggett's survey of the southwest quarter of township fourteen of Totten and Crossfield's purchase; thence southeasterly along the line of Leggett's survey to the southerly line of said township fourteen; thence southwesterly along the line of Leggett's survey, being the southerly line of said township fourteen, to the most southerly corner of said township; thence southeasterly along the easterly line of township thirteen and the westerly line of township twelve, to the southeasterly corner of lot twenty-five of township eleven of said Totten and Crossfield's purchase; thence southwesterly along the southerly line of lots twenty-five, twenty-six, twenty-seven and twenty-eight to the southwesterly corner of said lot

twenty-eight; thence southeasterly along the easterly lines of lots forty-four, fifty-three, sixty-eight, seventy-seven and five of said township eleven, and of lots nine, twenty-one, thirty, thirty-seven and forty of the gore between township eleven of Totten and Crossfield's purchase and the Dartmouth patent and of lots five of ranges six, seven, eight, nine and ten of the Dartmouth patent, great tract, to the southeasterly corner of lot five of said range six of said patent in Warren county; thence westerly along the southerly line of said range six of said Dartmouth patent to the northeasterly line of Palmer's purchase; thence southeasterly along the easterly line of said Palmer's purchase to the most easterly corner of the middle division of said purchase; thence southwesterly along the southerly line of the said middle division of Palmer's purchase through Saratoga county to the easterly boundary of the town of Hope in Hamilton county; thence southerly along the east line of the town of Hope to the place of beginning, shall constitute and be known as the Adirondack park. All lands within such park now owned, or which may hereafter be acquired by the state, shall be forever reserved and maintained for the use of all the people. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 52. **Catskill park.**—All lands located in the counties of Greene, Delaware, Ulster and Sullivan within the following described boundaries, to wit:—Beginning in Ulster county at the southeasterly corner of great lot five of the Hardenburg patent, thence running northwesterly along the southerly boundary of said great lot five through Sullivan county to the east branch of the Delaware river in Delaware county; thence along the southerly bank of the said east branch of the Delaware river to the Ulster and Delaware railroad at the village of Arkville; thence along the said Ulster and Delaware railroad easterly to the line between the counties of Delaware and Ulster; thence northeasterly along that line to the southerly line of Greene county; thence northwesterly along the southerly line of Greene county to the line between the towns of Halcott and Lexington; thence northerly along the easterly line of the town of Halcott to the line between great lots twenty and twenty-one of the Hardenburg patent; thence northerly along said line to the south bank of the Bataviakill; thence along the southerly bank of the Bataviakill easterly to the west line of the state land tract; thence northerly, easterly and southerly along the line of the said state land tract to the line between the towns of Cairo and Catskill; thence southwesterly along said town line to the easterly line of the town of Hunter; thence southerly along the said easterly line of the town of Hunter to the line of the Hardenburg patent; thence easterly, southerly and westerly along the general easterly line of the Hardenburg patent to the line between the towns of Olive and Rochester of Ulster county; thence easterly on said line to the point where the Mettcahonts creek crosses the same flowing easterly; thence southwesterly parallel with the northwesterly line of the town of Rochester to the line between the towns

L. 1912, ch. 444.

Lands, forests and public parks.

§§ 53-55.

of Rochester and Wawarsing; thence westerly and southerly along the line of the Hardenburg patent to the place of beginning, shall constitute and be known as the Catskill park. All lands within such park, now owned, or which may hereafter be acquired by the state, shall be forever reserved and maintained for the free use of all the people. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 53. **Saint Lawrence Reservation.**—All that part of the River Saint Lawrence lying and being within the state, with the islands therein, and all that portion of Lake Ontario adjacent to Jefferson county, including Chaumont bay, Guffins bay, Black River bay and Henderson bay, with the islands therein, and such lands along the shore thereof as are now owned by, or shall hereafter be acquired by the state, is continued as an international park which shall be known as the "Saint Lawrence Reservation." (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 54. **John Brown Farm.**—All that certain tract of land in the Adirondack park, known as the "John Brown Farm," in the town of North Elba, in the county of Essex and state of New York, being the greater part of lot number ninety-five, Thorn's survey, of township number twelve, Old Military Tract, now owned by the state pursuant to a deed of gift made and executed the twenty-ninth day of March, eighteen hundred and ninety-five, by Henry Clews and Lucy Madison Clews, his wife, to the people of the state of New York, shall be and continue to be dedicated and used for the purposes of a public park or reservation forever. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 55. **General powers of the commission as to lands, forests and parks.**—The commission shall:

1. Have the care, control and supervision of the forest preserve and all parks and reservations hereinbefore described.

2. Make all necessary rules and regulations for the enforcement of the provisions of this article.

3. Administer all laws relating to forest tree culture and reforestation.

4. Publish from time to time pamphlets and circulars of instruction relative to the care, use, management and protection of forests and woodlands.

5. Have power to issue licenses to guides and other persons engaged in business in the public parks of the state on such terms and conditions as it may impose.

6. Cause to be made investigations as to methods of reforestation; prevention of forest fires; growth studies; yield tables or otherwise to secure competent information necessarily required in practical forestry.

7. Have power under the provisions of this act, subject to the approval of the governor, to purchase lands, forests and rights in timber within the forest preserve counties of the state.

8. Possess all the powers relating to the forest preserve and the Adirondack and Catskill parks which were vested in the forest purchasing board, and in the forest, fish and game commission on the twelfth day of July, nineteen hundred and eleven.

9. Have power to receive and accept in the name of the people of the state by gift or devise the fee, or other estate therein, of land for forest preserve or forestry purposes, and also to receive and accept by gift, contribution or bequest, moneys to be used in acquiring or improving real estate for such purposes.

10. Make rules for the prevention of forest fires and cause the same to be posted in all proper places throughout the state.

11. Nothing in this chapter shall be construed as extending the jurisdiction of the conservation commission over the real or personal property now or hereafter under the control or in the custody of the commissioners of the Palisades Interstate Park, but said conservation commission is authorized to co-operate with said commissioners of the Palisades Interstate Park by the joint employment of wardens, foresters and keepers for the mutual protection of the lands under the jurisdiction of said respective commissions and other state commissions and the preservation of the forests thereon and of the fish and game therein. (*Added by L. 1912, ch. 444, in effect April 16, 1912.*)

§ 56. *Inspection of public parks and reservations.*—The conservation commission shall have power to visit, and inspect all public parks, places and reservations acquired by the state for scenic, scientific or historic purposes, or for the preservation, protection and conservation of the lands, forests and waters of the state, or for public health or recreation, the custody and supervision of which has not been committed by law to any other state officer or state officers, as the same are defined by section two of the public officers law; and in respect to all societies, associations, boards and corporations which have the care, management, custody or control of any such public parks, places or reservations, or which receive and disburse state moneys for any of the above purposes, said commission may:

1. Aid in securing the economic administration of all such bodies.

2. Advise and co-operate with the officers of such bodies in the performance of their official duties.

3. Aid in securing the erection of structures and buildings suitable and necessary for the purposes for which such public parks, places and reservations were established.

4. Collect statistical information in respect to the property, receipts and expenditures of all such bodies.

5. Co-operate with such bodies in the protection and preservation of the lands, waters and other property of the state; in the reforestation of any state land and in the establishment of a fire patrol system, when necessary in the judgment of the commission. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 57. **Visitation and inspection.**—The public parks, places and reservations under the jurisdiction of the bodies mentioned in the last preceding section may be visited and inspected at any and all times by the conservation commission, or any member, officer or inspector duly appointed by it for that purpose. Such commission, or any member thereof, may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection. Any member, or officer of such commission, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such body, and may require from the officers and persons in charge thereof any information he may deem necessary in the discharge of his duties. The commission may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished in a clear, uniform and prompt manner for the use of the commission. The annual report of the conservation commission of each year shall give the results of such inquiries, with the opinion, conclusions and recommendations of the commission relating to the same. The rights and powers hereby conferred may be enforced by an order of the supreme court after notice and hearing. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 58. **Powers and duties of commission on inspection.**—On such visits and inspection inquiry shall be made to ascertain:

1. The merits of any and all requests on the part of any such body for state aid for any purpose, and the amount required to accomplish the object desired.
2. The sources and amounts of all moneys received by such bodies and the proper and economical expenditure of the same, and the condition of the finances generally.
3. Whether the laws of the state, and the rules and regulations in relation to such public parks or reservations, are being complied with.
4. The condition of the lands, forests, buildings, and other property under the control of such body.
5. Any other matter connected with, or pertaining to, the usefulness and good management of such bodies. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 59. **Recommendations to state institutions.**—The conservation commission is authorized and empowered to make, or cause to be made, an examination of the lands of the state used in connection with state institutions, at least once in each year, and at such other times as the state officer having jurisdiction over such institutions may request; and said commission shall report the results of such examination, and make recommendations thereupon, and give advice in reference to the protection and improvement of forests and shade trees thereon, to the fiscal supervisor of state charities, the superintendent of state prisons, or the state commission of lunacy for their respective departments. The superintendent or other managing

officer of such institution shall transmit such information in relation to such lands as may be requested by the conservation commission, and shall render such other assistance as the conservation commission shall require. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 60. Superintendent of forests, assistant superintendent of forests and foresters.—The commission may appoint a superintendent of forests, an assistant superintendent of forests, and necessary state foresters. The superintendent of forests, and in his absence or inability to act, the assistant superintendent of forests, shall, subject to the direction of the commission, have general supervision of the forest preserve and the forestry interests of the state, and shall enforce all laws and regulations for the protection and preservation of the forest preserve, and the public parks described in this chapter. The foresters shall perform such duties as may be prescribed by the commission. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 61. Forest pathologist.—The commission may appoint a forest pathologist who, under the direction of the commission, shall make examinations of forest trees with respect to disease, and make reports of the results of such examinations to the commission. The commission shall have the power to advise as to the proper disposal of any infected tree or trees or other infectious substance, which is liable to spread or cause the spread of any injurious tree disease. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 62. Powers of commission in reforestation.—The commission shall have power to establish nurseries for the propagation of trees for the purpose of reforesting land within the state and may purchase trees for such purpose. Trees so grown or purchased may be used for reforesting lands in the forest preserve and any of the public parks and lands of the state, or may be given to state institutions and the bodies mentioned in section fifty-six of this act for planting upon the lands thereof, or may be used for the purpose of reforesting any other state lands, or with the consent of the tribes, to reforest lands located within any Indian reservation within the state. Stock so grown may also be used for reforesting any private lands under such contracts, terms and conditions as, in the judgment of the commission, may be to the public interest, and may be sold to municipalities and to private landowners at not to exceed the cost of production if used within the state for reforesting purposes. The commission may, with the approval of the superintendent of state prisons, use convicts of any of the penal institutions of the state either for the purpose of propagating trees or for the field planting, and for said purposes, the superintendent of state prisons may permit the use of, employ or cause to be employed, convicts confined in any penal institution of the state, and may make such rules as he may deem necessary for the proper care of such

prisoners while so employed. The commission may also propagate other trees or shrubs which may be given for the use of state institutions or planting along improved highways. Any common carrier may transport such stock from such nurseries free of charge, or at a rate that may be lower than the established tariff rate. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 63. **Trespass on state lands.**—1. Forest rangers, district forest rangers, inspectors, land appraisers, game protectors and fire wardens, shall upon the discovery of a trespass, as defined by section one hundred and ten of this chapter, upon the forest preserve or other lands owned by the state, forthwith report the same in writing to the superintendent of forests. All such officials shall have the power to arrest without warrant any person detected in trespassing as aforesaid, and shall take such person immediately before a magistrate having jurisdiction for examination or trial; and they shall immediately report such action to the commission.

2. Actions may, on the order of the commission, be maintained in the name of the people,

(a) To recover damages for trespass or waste on lands in the forest preserve or other lands owned by the state, or to prevent trespass or injury thereto, with relief by temporary or final injunction; or

(b) To recover the possession of any such lands.

A person who cuts, destroys or carries away, or causes to be cut, destroyed or carried away, any tree, timber, wood or bark from state lands in the forest preserve counties or other lands owned by the state, except buildings or other structures authorized by the commission to be removed, is guilty of a misdemeanor if the value thereof is less than twenty-five dollars; if the value thereof is twenty-five dollars or upwards such person is guilty of a felony; he shall also be liable to a penalty of ten dollars for each tree cut, taken away or destroyed. The penalty so incurred may be recovered in the action to recover damages for trespass or in a separate action. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 64. **Actions to set aside cancellations and determine title.**—1. Said commission may, and it is hereby given the exclusive power to bring, in the name of the people of the state, any action or special proceeding, which an owner of land would be entitled to bring, in a court of justice or before the comptroller of the state.

(a) To set aside the cancellation of any sale of lands for taxes, or

(b) To ascertain and determine the title to any lands claimed by the commission to be owned by the people of the state, within the Adirondack or * Catskill parks, or in any of the forest preserve counties, claimed by any person or persons, association or corporation adversely to the state, and

(c) If such lands are held or occupied by or under such claimants, to recover the possession thereof; and

* So in original.

(d) To demand an accounting and recover damages for any timber cut or removed from any lands involved in any such action, and

(e) If demanded in the complaint, to recover triple damages therefor. But the provisions of this section shall not impair any power now possessed by the attorney-general to protect and preserve the rights of the state.

2. Said commission may make any demand, tender or offer, before or after commencing any action or special proceedings, deemed necessary or proper for the purpose of entitling it to enforce or defend any right or claim on behalf of the state; and may, in its discretion, settle and compromise any suits and special proceedings authorized by this section and adjust the claims involved therein.

3. Said commission may, and it is hereby given power to bring, in the name of the people of the state, any action or proceeding in a court of justice, which an owner of land would be entitled to bring, to perfect the state's title, or record title, to land owned or claimed by it, within the Adirondack or Catskill parks or in the forest preserve counties of the state, and any other action or special proceeding with respect to such lands which an owner of lands would be entitled to bring.

All such actions and proceedings shall be brought in the county where the lands are located, and a preliminary or final injunction may, on application in an action or proceeding brought under this section, be granted restraining any act of trespass, waste or destruction upon any lands within the Adirondack or Catskill parks, or within the forest preserve counties, owned or claimed to be owned by the state, or which may hereafter be acquired by the state.

No settlement or compromise provided for in this section, and which shall affect any title of the state to any lands, shall be made without the approval of the governor, and the same shall be subject to the provisions contained in section nine of this chapter respecting the settlement, withdrawal and discontinuance of actions, suits and proceedings. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 65. **Right of partition.**—Whenever the state owns an undivided interest in common in lands in the forest preserve counties, or is in possession of such lands as joint tenant with another having a freehold estate therein, the attorney-general shall, on the order of the commission, bring an action in the name of the people for the actual partition thereof. On the written consent of the commission a co-tenant may maintain an action for the actual partition of such land, making the state a party defendant, and service of process upon the attorney-general shall be deemed service upon the state. Lands shall not be sold in such an action, nor shall costs be allowed against the state. Actual partition of such lands subject to the approval of the comptroller, may be made by the commission and the owner without an action brought therefor, and the comptroller may, in the name of the people, make any conveyance necessary or proper in

such partition. Such conveyances shall be recorded in like manner as conveyances made by commissioners of the land office. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 66. **Appropriation of lands.**—Said commission may: 1. Enter upon and take possession of any lands, forests, and rights in timber upon such lands, and waters, or any part, or portion thereof, within the Adirondack and Catskill parks, the appropriation of which, in the judgment of said commission, shall be necessary for public park purposes, or for the protection and conservation of the lands, forests and waters within the state, and

2. Enter upon and take possession of any lands and waters within the state that may be necessary, in the judgment of said commission, for the purpose of artificial propagation of food and game fish for restocking the public waters of the state. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 67. **State engineer and surveyor: description of land appropriated.**—Upon the request of said commission, an accurate description of such lands, forests, and rights in timber upon such lands, and waters so entered upon and appropriated, shall be made by the state engineer and surveyor and certified by him to be correct, and said commission, or a majority thereof, shall indorse on such description a certificate stating that the lands, forests, and rights in timber upon such lands, and waters described therein have been appropriated by the state for the purpose of making them a part of the Adirondack or Catskill parks, or for the protection and conservation of the land, forest or waters within the state, or for fish hatchery purposes; and such description, and certificate shall be filed in the office of the comptroller, and certified copies thereof filed in the office of the conservation commission. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 68. **Service of notice.**—The said commission shall thereupon cause a duplicate of said description and certificate, with notice of the date of filing thereof in the office of said comptroller, to be served on the owner or owners of the lands, forests, and rights in timber upon such lands and waters so appropriated; and from the time of such service the entry upon and appropriation by the people of the state of the property described in such notice shall be deemed complete, and thereupon such property shall become, and be, the property of the people of the state. Such notice shall be conclusive evidence of an entry and appropriation by the state; but the service of such notice shall raise no presumption that the lands, forests, and rights in timber upon such lands, described therein are private property. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 69. **Manner of service.**—Service of the notice and papers provided for under the preceding section must be personal if the person to be served

§§ 70-72.

Lands, forests and public parks.

L. 1912, ch. 444.

can be found within the state. If the person to be served falls within any of the classes mentioned in section four hundred and thirty-eight of the code of civil procedure, the provisions of article second, title one of chapter five of the code of civil procedure relating to the service of a summons in an action in the supreme court, shall apply, so far as practicable, to the service of such notice and papers. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 70. Description and certificates to be recorded.—Said commission shall thereupon cause a duplicate of such description, certificate, and notice of filing, with an affidavit of due service thereof on such owner or owners, to be recorded in the books used for recording deeds in the office of the clerk of any county of this state in which any of the property described therein may be situated; and the record of such notice, and of such proof of service, shall be presumptive evidence of the due service thereof. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 71. Adjustment of claims by agreement.—Claims for the value of the property appropriated, and for legal damages caused by any such appropriation, may be adjusted by the commission, if the amount thereof can be agreed upon with the owner or owners thereof. Upon making any such adjustment and agreement the commission shall deliver to the comptroller a certificate stating the amount due to said owner on account of such appropriation of his land or other property, and the amount so fixed shall be paid by the treasurer upon the warrant of the comptroller. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 72. Board of claims, jurisdiction of.—If the commission and the owner or owners of the property so appropriated fail to agree upon the value of such property, or upon the amount of legal damages resulting from such appropriation, within one year after the service of the notice and papers provided for in section sixty-eight of this chapter, such owner may, within two years after the service of such notice and papers, present to the board of claims a claim for the value of such land and legal damages; and said board shall have jurisdiction to hear and determine such claim and render judgment thereon. Upon filing in the office of said commission, and in the office of the comptroller, a certified copy of the judgment of the board of claims, and a certificate of the attorney-general that no appeal from such judgment has been, or will be taken, by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part the judgment of the board of claims, the comptroller shall issue his warrant for the payment of the amount due the claimant by such judgment, with interest from the date of the judgment until the thirtieth day after the entry of such final judgment, and such amount shall be paid by the treasurer. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 73. **Board of claims to examine property.**—The board of claims, if requested by the claimant or the attorney-general, shall examine the real property affected by the claim of damages for the appropriation thereof and take testimony in relation thereto in the county where such property or a part thereof is situated. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 74. **Owner may reserve timber on land appropriated.**—1. The owner of land taken under this article may, with the written consent of the conservation commission, and within the limitations hereinafter prescribed, reserve the trees thereon eight inches or more in diameter, breast high, at the time of the service of the notice. Such reservation must be exercised within six months after the service upon the owner of a notice of the appropriation, by the owner serving upon such commission a written notice that he elects to reserve such trees. If such notice be not served by the owner within the time above specified he shall be deemed to have waived his right to such reservation, and such trees shall thereupon become and be the property of the state.

The presentation of a claim to the board of claims before the service of a notice of reservation shall be deemed a waiver of the right to such reservation. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 75. **Reservation on lands purchased.**—Land acquired by purchase may be taken subject to the reservation of the trees thereon down to eight inches in diameter, breast high, at the time of such purchase, with the right to the owner to remove the same within the time specified in the next section, or upon agreement between the commission and the owner, subject to any lease, mortgage, or other incumbrance, not extending fifteen years beyond the date of acquisition. The amount or value of any such lien, incumbrance or timber reservation, upon land so purchased, shall be deducted from the purchase price thereof. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 76. **Right to reserve timber restricted.**—The right to reserve timber, and the manner of exercising and consummating such right, are subject to the following restrictions, limitations and conditions:

1. Timber within twenty rods of a lake, pond or river cannot be reserved. Under the supervision of the commission roads may be cut or built across or through such excepted space of twenty rods, for the purpose of removing trees from adjoining lands, and the person reserving such timber on the adjoining lands, his legal representatives or assigns, shall have the right, which right shall be deemed a part of such reservation, to construct such roads, through and across the reserved timber land, and through and across such excepted strip, as may be necessary to remove the timber so reserved; but in constructing such roads only such trees shall be cut as are within the limits of such roads. The commission

may prescribe the number of all such roads and may permit the use of any dead, down or other necessary timber for the construction only of roads, skidways, lumber camps, or for fuel, which right shall also be deemed a part of the soft wood timber reservation by the owner. No trees or timber shall be cut for the construction of roads, camps or other purposes, except such as are reserved by the owner, or for which permission to cut has been given as provided in this section.

2. All timber reserved by the owner must be removed from the land within fifteen years after the services of notice of reservation or the making of the contract of purchase, subject to reasonable regulations to be prescribed by the commission; such land shall not be cut over more than once, and said commission may prescribe reasonable regulations for the purpose of enforcing this limitation. All timber reserved, and not removed from the land within such time, shall thereupon become and be the property of the state, and all title or claim thereto by the original owner, his legal representatives or assigns, shall thereupon be deemed abandoned. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 77. Compensation for reserved timber lands.—A person who reserves timber as provided in this article shall not be entitled to any compensation for the value of the land purchased or taken and appropriated by the state, or for any damages caused thereby, until

1. The timber so reserved is all removed and the object of the reservation fully consummated; or

2. The time limited for the removal of such timber has fully lapsed, or the right to remove any more timber is waived by a written instrument filed with said commission; and

3. Said commission is satisfied that no trespass on state lands has been committed by such owner, or his assigns, or legal representatives; that no timber or other property of the state, not so reserved, has been taken, removed, destroyed, or injured by him or them, and that a cause of action in behalf of the state does not exist against him or them for any alleged trespass or other injury to the property or interests of the state; and

4. That the owner, his assignee or other legal representatives, has fully complied with all rules, regulations and requirements of said commission concerning the use of streams, or other property of the state, for the purpose of removing such timber. Provided, however, that said commission may at any time by its certificate filed with the comptroller direct the payment to the owner of such land, his legal representatives or assigns, of the compensation therefor, or a part thereof, at such time and upon such conditions, as may be set forth in the certificate. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 78. Timber reserved; value of land; how determined.—If timber be reserved, its value at the time of making an agreement between the owner and said commission for the value of the land so appropriated, and the

legal damages caused thereby, or at the time of the presentation to the board of claims of a claim for such value and damages, shall be taken into consideration in determining the compensation to be awarded to the owner on account of such appropriation either by such agreement or by the judgment rendered upon such a claim. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 79. Appraisers and their compensation.—Said commission may appoint appraisers to examine the lands offered for sale to the state and ascertain the value of such lands and the timber thereon and report to the commission. Said commission shall fix the compensation of all appraisers and all their assistants, employed by the commission, which compensation shall be paid by the treasurer upon the certificate of the commission and the audit and warrant of the comptroller. A person so appointed may be removed at the pleasure of the commission. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 80. Adjustment of claims for trespass or other injuries.—In cases of trespasses or other injuries to lands or property purchased or acquired by the state the commission may settle and adjust any claims for damages due to the state on account of any such trespasses or other injuries to property or interests of the state, or penalties incurred by reason of such trespasses or otherwise, and the amount of such damages or penalties so adjusted shall be deducted from the original compensation agreed to be paid for the land, or for damages, or from a judgment rendered by the board of claims on account of the appropriation of such land. A judgment recovered by the state for such a trespass or for a penalty shall likewise be deducted from the amount of such compensation or judgment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 81. Perfecting title to lands.—Said commission shall take such measures as may be necessary or proper to perfect the title to any lands in the forest preserve counties now held by the state, and for that purpose may pay and discharge any valid lien or incumbrance upon such land, or may acquire any outstanding or apparent right, title, claim or interest which, in its judgment, constitutes a cloud on such title. The amounts necessary for the purposes of this section shall be paid by the treasurer upon the certificate of the commission and the audit and warrant of the comptroller, together with the expenses of the examination of the title thereto. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 82. Judgments.—When a judgment for damages is rendered for the appropriation of any lands or waters for the purposes specified in this article, and it appears that there is any lien or incumbrance upon the property so appropriated, the amount of such lien shall be stated in the judgment, and the comptroller may deposit the amount awarded to the claimant in any bank in which moneys belonging to the state may be de-

§§ 83-86.

Lands, forests and public parks.

L. 1912, ch. 444.

posited, to the account of such judgment, to be paid and distributed to the persons entitled to the same as directed by the judgment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 83. **Warrants.**—A warrant shall not be drawn by the comptroller for the amount of compensation agreed upon between the owner and said commission, nor for the amount of a judgment rendered by the board of claims, until a further certificate by the commission is filed with the comptroller to the effect that the owner has not reserved any timber and that he, his assignee or other representative, has complied with the provisions of this article, or has otherwise become entitled to receive the amount of the purchase price, award or judgment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 84. **Interest.**—If timber is reserved upon land purchased or appropriated as provided by this article, interest is not payable upon the purchase price, or the compensation which may be awarded for the value of such land, or for damages caused by such appropriation, except as provided in section seventy-two of this chapter. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 85. **Costs and disbursements; when offer made.**—If an offer is made by said commission for the value of land appropriated, or for damages caused by such appropriation, and such offer is not accepted, and the recovery in the board of claims exceeds the offer, the claimant is entitled to costs and disbursements as in an action in the supreme court, which shall be allowed and taxed by the board of claims and included in its judgment. If in such a case the recovery in the board of claims does not exceed the offer, costs and disbursements to be taxed shall be awarded in favor of the state against the claimant and deducted from the amount awarded to him; or if no amount is awarded, judgment shall be entered in favor of the state against the claimant for such costs and disbursements. If an offer is not accepted, it can not be given in evidence on the trial. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 86. **Deeds, contracts, records; where filed.**—All contracts, deeds of gift or purchase, and papers relating to appropriations of land, authorized by this chapter, and the abstracts of title to said lands shall be approved by the attorney-general, and a certificate of such approval shall accompany such papers, or be endorsed thereon; and all such original contracts, deeds of gift or purchase, and papers constituting the record of appropriation, shall be filed in the office of the comptroller, and the conveyances, recorded as provided by law, and certified copies of all such contracts, deeds of gift or purchase, and papers relating to appropriations of land and all abstracts of search and title relating to lands in the forest preserve shall be filed in the office of the conservation commission. And this section shall be sufficient authority and direction to

the various state officers, boards or commissions having any such conveyances, documents or papers in their possession to deliver the same to the comptroller, to be by him recorded and filed according to law. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 87. **Removal of timber; use of streams.**—Persons entitled to cut and remove timber under this article may use streams or other waters of the state within the forest preserve counties for the purpose of removing such timber, under such regulations and conditions as may be prescribed or imposed by the commission. The persons using such waters shall be liable for all damages suffered by the state or any person caused by such use. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 88. **Examination of private forest lands.**—To the end that the water supply of the state may be conserved, the forests protected, and the public interests safeguarded, the commission may enter upon any private forest or wood lands for the purpose of inspection and examination relative to the practice of the proper methods of forestry, and may thereafter advise the owner or occupant of such lands in respect thereto. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 89. **Exemption of reforested lands from taxation.**—In consideration of the public benefit to be derived from the planting and growing of forest trees, and to the end that the growth of forest trees may be encouraged and the water supply of the state protected and conserved, and that floods may be prevented, the owner of any waste, denuded or wild forest lands, of the area of five acres or upwards, within the state, which are unsuitable for agricultural purposes, who shall agree with the commission to set apart for reforestation or for forest tree culture, the whole, or any specific portion of such waste, denuded or wild forest lands, of the area of five acres or upwards, may apply to the conservation commission, in manner and form to be prescribed by it, to have such lands separately classified as lands suitable for reforestation or underplanting within the purposes and provisions of this section. Each application for such classification shall be accompanied by a plot and description of the land, and shall state the area, character and location thereof, and such other information in reference thereto as the commission may require; such application shall be accompanied by a certificate of the assessors of the tax district or districts in which said lands are located, which shall set forth the assessed valuation of said lands for the last five years preceding the date of such application; or if said lands have not been separately assessed during any part of said period, or the timber has been removed therefrom at any time during said period of five years, by a sworn statement of the assessors of the value of said lands, which lands shall be valued at the same rate as other waste, denuded or wild forest lands in said tax district, similarly situated; such application shall also

contain a declaration that the owner intends to reforest or underplant the lands described in such application with such number and kind of trees per acre and in such manner as the commission shall specify, and to comply with all reasonable rules and regulations of the commission in reference to future care and management of said lands and trees.

If it appears from said application and certificate or sworn statement that said lands are suitable for reforestation or underplanting purposes and have not been assessed during the period of five years next preceding the date of such application at an average valuation of more than five dollars per acre, or that similar lands in said vicinity have not been assessed for more than five dollars per acre, the said commission shall, as soon as practicable after the receipt of such application, cause an examination to be made of the lands for the purpose of determining whether or not it is of a character suitable to be reforested or underplanted and to be classified as such. After such examination if the commission shall determine that such lands are suitable for reforestation or underplanting, it is hereby empowered to enter into a written agreement with the owner, which agreement shall be to the effect that the commission will furnish said owner, at a price not to exceed cost of production, trees to be set out upon said lands, the kind and number to be prescribed by the commission, and to be set forth in said agreement; that the owner will set out upon said land the number and kind of trees per acre designated by the commission; and that said land will not be used for any purpose other than forestry purposes, during the period of exemption, without the consent of the commission; and that said lands and the trees thereon will be managed and protected at all times during the period of said exemption in accordance with the directions and instructions of the commission. Said agreement shall be recorded in the office of the county clerk of the county where the lands are situated, and the provisions thereof shall be deemed to be and be covenants running with the land. Within one year after the making of such agreement, said lands shall be planted by the owner with the number and kind of trees specified therein; and the owner shall file with the commission an affidavit making due proof of such planting, which affidavit shall remain on file in the office of said commission. Upon the filing of such affidavit the commission shall cause an inspection of such lands to be made by a competent forester who shall make and file with said commission a written report of such inspection. If the commission is satisfied from said affidavit and report that the lands have been forested in good faith as provided in said agreement, it shall make and execute a certificate under its seal, and file the same with the county treasurer of the county in which the lands or any part thereof so forested are located, which certificate shall set forth a description of said lands, the area and the owner thereof, the town in which the same are situated, a statement that the land has been separately classified for taxation in accordance with the provisions of this section

and a valuation, in excess of which, said lands shall not be assessed for the period of thirty-five years, which valuation shall not in any event be greater than the average valuation at which the same lands were assessed for the last five years preceding the date of said application, or the value of such lands as appears by the aforesaid sworn statements of the assessors of such tax district, and a statement that the trees and timber thereon shall be exempt from taxation during said period. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of each tax district in which the lands described are located, a certified copy thereof, and the assessors of such tax district shall place the lands according to the description contained in said certificate upon the next assessment-roll, prepared for the assessment of lands within such tax district, at a valuation not to exceed the amount stated in said certificate, and not to exceed the assessed valuation of similar lands in said tax district; and said assessors shall insert upon the margin of said assessment-roll opposite the description of said lands, a statement that said lands shall not be assessed during the period of thirty-five years at a value in excess of said amount and that the trees and timber growing upon said land shall be wholly exempted from taxation during said period; and said assessors shall also insert upon the margin of said assessment-roll the date of expiration of said exemption. Such lands shall be assessed, and continue to be assessed, and carried in such manner, upon the assessment-rolls, of such towns until the end of the exemption period. In the event that lands so classified shall, in the judgment of the commission, cease to be used exclusively for forestry purposes to the extent provided in the agreement between the conservation commission and the owner, or that said owner has violated its terms, or any reasonable rules and regulations of the commission in respect to the use of or the cutting of timber on said lands, the exemption from taxation provided in this section shall no longer apply; or at the election of the commission such owner may be also restrained from said acts by injunction; and the assessors having jurisdiction shall, upon the direction of the commission, assess said lands against the owner at the value, and in the manner provided by the tax law for general assessment of land.

The planting or underplanting of a tract in forest trees in compliance with the agreement as provided in this section shall be taken and deemed to be an acceptance by the owner of the exemption privileges herein granted and of the conditions herein imposed; and in consideration of the public benefit to be derived from the planting, underplanting, cultivation and growth of such trees the exemption of such trees from taxation and the taxation of the land upon which such trees are grown as herein provided, shall be continued and is hereby assured; and the right to such exemption and taxation shall be inviolable and irrevocable as a contract obligation of the state, so long as the owner of the land so planted shall fully comply with and perform the conditions

of such contract not exceeding said period of thirty-five years. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 90. Limbs and branches to be lopped.—Every person who shall, within any of the towns enumerated in section ninety-seven of this chapter, cut or cause to be cut, or permit to be cut any evergreen trees for sale or other purposes, shall cut off or lop or cause to be cut off or lopped from the said trees, at the time of cutting the said trees, all the limbs or branches thereof, unless the said trees be cut for sale and use with the branches thereon, or for use with the branches thereon. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 91. Fire districts; district forest ranger; observation stations.—For the prevention and fighting of forest fires, the commission shall,

1. Make and enforce such rules and regulations as may be necessary and proper for the organization, maintenance, government and direction of the fire protective system provided for in this article.

2. Divide lands which are within the territory described in section ninety-seven of this act into such number of suitable and convenient fire districts as in its judgment may be necessary.

3. Appoint a district forest ranger for each of such fire districts who shall act during the pleasure of the commission at an annual salary of not to exceed fifteen hundred dollars and necessary expenses. Said district forest rangers shall, under the direction of the commission, have charge of the fire fighting system and men in such districts; and shall be charged with the duty of preventing and extinguishing forest fires and with the performance of such other duties as may be required by the commission.

4. Provide all proper fire-prevention and fire-fighting implements and apparatus, organize fire companies and establish observation stations and employ men to attend them in all fire districts established as herein provided; provide fire signals and adopt a fire signal code for use therewith; construct and maintain telephone lines and provide such other means of communication as shall be necessary to prevent and fight forest fires.

5. Cause trails to be cut, ditches to be dug and barriers to be erected in the forests of such fire districts as may, in its judgment, be necessary to enable all persons quickly to reach the location of fires and to prevent and fight the fires. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 92. Forest rangers; fire wardens.—1. With the approval of the commission each district forest ranger shall divide his fire district into such separate fire districts as the public interests require.

2. The commission shall employ such number of suitable persons as may be necessary, to be known as forest rangers, to remain within and patrol one or more of such fire districts, as long as may be required, and to prevent and extinguish any fires which may be started therein, and

L. 1912, ch. 444.

Lands, forests and public parks.

§§ 93, 94.

to perform such other duties as the commission may prescribe, at monthly salaries of not to exceed seventy-five dollars per month and necessary expenses. Each such forest ranger so employed may be supplied with such tents, camps, fire-fighting implements, food and cooking utensils as in the judgment of the commission may be necessary. All forest rangers so employed shall be furnished with a copy of the rules and regulations adopted by the commission for preventing and fighting forest fires, and shall at all times strictly observe and comply with such rules and regulations. The district forest ranger, the forest ranger, game protector, or any other officer charged with the duty of fighting fires, may, when necessary, employ men and teams to fight forest fires and foremen, to be known as fire wardens, to direct the work of men who are actually engaged in fighting forest fires, and may incur any other necessary expenses, and may summon any male person of the age of eighteen years and upwards to assist in fighting forest fires. Any person so summoned who is physically able and refuses to so assist, shall be liable to a penalty of twenty dollars.

3. An action for trespass shall not lie against persons crossing or working upon lands of another to prevent or fight fires, or performing any other duties required by this chapter.

4. Each forest ranger shall make a report to the district forest ranger of the district in which he is employed of every fire which is started or burns within his fire district, stating the cause and source of such fire, the extent and character of the land burned over and the means used for fighting the fire. The district forest rangers shall transmit all such reports to the commission, and shall also report all other fires of which they have personal knowledge, giving the particulars thereof as is required of the forest ranger. All men employed under the provisions of sections ninety-one, ninety-two and one hundred and one of this article shall, as emergency employees, be exempt from the provisions of the civil service laws of this state. (*Added by L. 1912, ch. 444, in effect, Apr. 16, 1912.*)

§ 93. **Special fire wardens.**—Where owners of woodlands, or any organization, shall maintain a fire patrol for protection of woodlands the commission may designate such patrolman as special fire warden and give to him, for the protection of lands patrolled by him or adjacent thereto, all the rights and powers of forest rangers as herein provided; and such special fire warden shall be paid wholly by such owners or organizations. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 94. **Expenses of fighting fires; how paid.**—1. All salaries, costs and expenses incurred by the commission and its appointees in the performance of their duties in connection with the fire protective system, shall be and are hereby made a state charge, and shall be paid by the state, except the wages, expenses and keeping of fire wardens and men summoned or employed to fight forest fires actually burning, which shall be paid as

hereinafter provided. The wages, expenses and keeping of such fire wardens, men and teams summoned or employed to fight forest fires actually burning, shall be fixed and paid by the commission, and the labor reckoned and paid by the hour, which shall not exceed the rate of fifteen cents for each hour employed, except fire wardens, who shall be paid twenty-five cents for each hour employed.

2. The commission shall keep, or cause to be kept, an accurate account of the wages of the fire wardens and men, teams, tools and equipment so employed, and the expenses and keeping of such fire wardens and men, teams, tools and equipment, and pay the same; and one-half the expense thereof shall be a charge upon and shall be paid by the state, and one-half thereof a charge upon and shall be paid by the town in which the fire wardens and men so employed were actually engaged in fighting fires. On or before November tenth of each year the commission shall transmit to the county clerk of each of the forest preserve counties, in which any forest fire has occurred, during the current year, a summary statement of the amount due the state from any town or towns in said county on account of such fires. The county clerk shall immediately deliver such statement to the board of supervisors of said county, who shall thereupon levy the amount due from each such town to the state upon the taxable property of such town by including the amount thereof in the sums to be raised and collected in the next levy and assessment of taxes therein, and the same shall be collected as other town charges are collected and paid over by the towns to the commission on or before May first following the levy thereof. If any person incurs expense in preventing or fighting forest fires, the commission may, upon satisfactory proof thereof being made to it within thirty days after the expense is incurred or the work performed, audit and pay the whole or any part thereof as the public interest requires, one-half to be rebated by the town as hereinbefore provided. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 95. **Auditor of fire accounts.**—The commission may appoint an auditor of fire bills and accounts, who shall receive an annual salary of eighteen hundred dollars a year, and necessary expenses, and who shall audit fire bills when reported to the commission, as herein provided, and perform such other acts as the commission may from time to time direct. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 96. **Advances for fighting fires.**—The auditor of fire accounts, if he has filed his official undertaking, may draw on the comptroller for advances to meet expenses of fighting fires. If such draft be countersigned by the superintendent of forests and a receipt for the amount thereof be filed with the comptroller, the comptroller shall pay the same by warrant on the treasurer in favor of the auditor of fire accounts; but the advances unaccounted for, by said auditor of fire accounts, for expenses of fighting fires shall not, at any time, exceed five thousand dollars. The said auditor

of fire accounts shall monthly render accounts of the amounts paid for such expenses of fighting fires, with sworn vouchers for the same to the comptroller, who shall audit them. If said auditor of fire accounts omits to render any such account, or his account rendered is not satisfactory, the comptroller shall notify the commission and no further advances shall be made until said auditor of fire accounts satisfactorily explains his omission to render proper accounts. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 97. **Fires to clear land in certain towns.**—Fallows, stumps, logs, brush, dry grass or fallen timber shall not be burned at any time in the territory hereafter described, without first obtaining the written permission of the district forest ranger or a forest ranger of the district in which the fire is to be set. If in a locality near forest or woodland, the district forest ranger or forest ranger shall be personally present when the fire is started. Such fires shall not be started during a heavy wind or without sufficient help present to control the same, and the same shall be watched by the person setting the fire until put out. Whenever a fire which has been set for the purposes specified in this section is found burning upon the lands of any person within the territory hereinafter described such fact shall be prima facie evidence that such fire was started by the owner or occupant thereof. Any person who violates any provision of this section is guilty of a misdemeanor, and in addition thereto is liable to a penalty of not less than fifty dollars nor more than three hundred dollars.

2. This section applies to Hamilton county; to the towns of Altona, Au Sable, Black Brook, Dannemora, Ellenburg and Saranac, Clinton county; the towns of Andes, Colchester, Hancock and Middletown, Delaware county; the towns of Chesterfield, Elizabethtown, Jay, Keene, Lewis, Minerva, Moriah, Newcomb, North Elba, North Hudson, Saint Armand, Schroon and Wilmington, Essex county; the towns of Altamont, Belmont, Brighton, Duane, Franklin, Harriettstown, Santa Clara and Waverly, Franklin county; the towns of Bleecker, Caroga, Mayfield and Stratford, Fulton county; the towns of Hunter, Jewett, Lexington and Windham, Greene county; the towns of Ohio, Russia, Salisbury, Webb and Wilmurt, Herkimer county; the towns of Croghan, Diana, Greig, Lyonsdale and Watson, Lewis county; the towns of Forestport and Remsen, Oneida county; the towns of Corinth, Day, Edinburg and Hadley, Saratoga county; the towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield, Pitcairn, Saint Lawrence county; the towns of Neversink and Rockland, Sullivan county; the towns of Denning, Gardiner, Hardenburg, Olive, Rochester, Shandaken, Shawangunk, Wawarsing and Woodstock, Ulster county; the towns of Bolton, Caldwell, Chester, Hague, Horicon, Johnsburch, Luzerne,* Queensburg, Stony Creek, Thurman and Warrensburg, Warren county; the towns of Dresden, Fort Ann and Put-

* So in original.

nam, Washington county. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 98. Setting fires without permission; felony; damages.—1. Any person who sets fire to waste or forest lands, except as provided by section ninety-seven of this chapter, or who negligently suffers a fire to extend from his own lands to any other lands whereby property is damaged to the value of twenty-five dollars and upwards, is guilty of a felony; if less than twenty-five dollars, is guilty of a misdemeanor. Such person shall also be liable to the state for any damages caused to state lands by such wrongful act, and to a penalty of ten dollars for each and every tree so killed or destroyed, and shall be liable to any person or municipality for any damages caused to such person or municipality by such wrongful act, and the person or municipality so injured, however distant from the place where such fire was set and notwithstanding the same may have burned over and across several separate and distinct tracts, parcels or ownerships of land, may, at his option, sue for and recover actual damages, or damages at the rate of one dollar for each tree killed.

2. Damages to state lands shall be ascertained and determined by the value of the timber thereon, taken at the value the said timber would have if the said lands were owned by private individuals.

3. The fact that any fire started on, or extended over from lands or rights of way owned or leased or used by any railroad company, or by any other person using, manufacturing or producing any coal, wood, oil or other fuel or any inflammable material thereon for other than domestic purposes, shall be prima facie evidence that the said fire was set or started thereon, or suffered to extend therefrom, by the willful negligence of the said person or railroad company.

4. Any moneys necessarily expended by the state, municipality, or other person, in fighting fires upon waste or forest lands may be sued for by the state, municipality, or person expending the moneys, and recovered from the person causing the fires as single damages, in addition to the damage or damages at the rate of one dollar, and in addition to the penalty or penalties of ten dollars for each tree killed, provided for as aforesaid. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 99. Penalties for setting fires.—Every person who shall kindle a fire on or near forest or brush land and leave it unquenched, or be a party thereto, or who shall set fire to brush, stumps, dry grass, field stubble or other material on or near such forest or brush lands and fail to extinguish the same before it has endangered the property of another; every person who shall negligently or carelessly set on fire, or cause to be set on fire, any woods, grass or other combustible material, whether on his own land or not, by means whereof the property of another shall be endangered, or who shall negligently suffer any fire upon his own lands to extend beyond the limits thereof; every person who shall use other than incom-

bustible gunwads or carry a naked torch, firebrand or exposed light in or near forest or wood land, or who, in the vicinity of such land, shall throw or drop into combustible material any burning match, ashes or pipe, lighted cigar or cigarette, or any other burning substance, and who fails to immediately extinguish the same, and every person who shall deface, destroy or remove any law, rule or notice posted under this chapter, shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars and not exceeding twenty-five dollars and costs of prosecution, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 100. **Regulations regarding camps and camp fires.**—Every person who starts a camp or other fire upon, or in the vicinity of, forest or wood land, for cooking, obtaining warmth or any industrial purpose, shall, before lighting the same, clear the ground of all branches, brushwood, dry leaves or other combustible material within a radius of ten feet from the fire, and shall carefully extinguish the fire before quitting the place.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor punishable by a fine of not less than ten or more than twenty-five dollars and costs of prosecution, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 101. **Fire patrol by railroads within forest preserve counties.**—1. All railroads operating as common carriers through forests in the forest preserve counties of the state shall, at their own expense, organize and maintain a competent and sufficient fire patrol to protect the forests from fires which may be set or occur upon, or adjacent to, the rights of way or lands of such railroads, and shall file with the commission on or before April first of each year a statement showing the names and addresses of the persons employed on such patrol, and unless otherwise directed by the commission, such patrol shall be maintained continuously from April first to November first of each year, and at such other times as the commission may direct.

2. If such railroads do not organize and maintain such fire patrols, or if, in the judgment of the commission, they do not organize and maintain fire patrols which are adequate and sufficient to protect and save the forests from fires which may be set or occur upon, or adjacent to, rights of way or lands of such railroads, then the commission shall organize and maintain such fire patrol in such manner and under such rules and regulations as it shall from time to time deem proper. The persons placed upon patrol of railroad lines and lands and railroad rights of way, and lands and ways adjacent thereto, as herein provided, shall be transported without charge from point to point by the railroads along whose lines such fire patrol is being maintained, as their duties shall require.

The commission shall keep, or cause to be kept, an account of the cost of organizing and maintaining such fire patrol along the line of any such railroad, including therein the salaries, expenses and wages of public officers or employees engaged in organizing and maintaining such fire patrol, and the total cost thereof shall be paid to the commission by the railroad along whose line or lands or rights of way such patrol is maintained. Such payment shall be made on the first day of December of each year, and may be recovered by the commission in a civil action in the name of the people of the state of New York, and in addition thereto said company shall be liable to a penalty of one hundred dollars for each violation of the provisions of this section; and every day such railroad shall fail to maintain the patrol required by this section shall be deemed a separate violation.

3. Any person employed upon fire patrol of such railroads shall immediately report to the commission, upon blanks to be furnished by it, every fire within his line of patrol which started upon the line of the railroad or ways or lands adjacent thereto, or ran off the railroad's right of way or lands to other lands, setting forth the origin of such fire and the extent and character of the land burned over, and, if the fire was started by a locomotive, he shall give the number thereof. Such report shall be verified by the person making it and if he is unable to state or ascertain the origin of such fire he shall in his report make oath of such fact. Any person so employed who fails to make such report immediately shall be liable to a penalty of twenty-five dollars; and if he makes a false report he shall be guilty of a felony and be punishable therefor. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 102. Fire patrol by railroads outside forest preserve counties.—1. When, in the judgment of the commission, there is danger of the setting and spreading of fires from locomotives in operating through any wooded or forest lands outside the forest preserve counties, the commission may order said railroad company to provide patrolmen to patrol the right of way, and lands adjacent thereto, as it may deem necessary to prevent fires, and such patrol shall be maintained continuously during the time directed by the commission, and such company or person shall immediately file with the commission a statement showing the names and addresses of the persons employed on such patrol.

2. When the commission has notified a railroad company to provide such patrol the said railroad company shall immediately comply with such instructions, throughout the territory designated; and upon its failure so to do, then the commission shall organize and maintain such fire patrol in such manner and under such rules and regulations as it shall from time to time deem proper; and such patrolmen shall be transported without charge from point to point by the railroads along whose lines such fire patrol is maintained as their duties shall require.

3. The cost of organizing and maintaining such fire patrol, including the salaries, expenses and wages of public officers or employees engaged therein, shall be charged to and paid by said railroad company on December first of each year, and may be recovered by the commission in a civil action in the name of the people of the state of New York, and in addition thereto said railroad company shall be liable to a penalty of one hundred dollars for each and every day's refusal or neglect to comply with the provisions of this section. Every person employed upon fire patrol under this section shall report to the commission in the manner, and be subject to the penalties, prescribed in the preceding section. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 103. Clearing right of way and fire protection devices by railroads in forest lands.—1. Every railroad company and every person operating a logging road in any part of the state shall, on such part of its road as passes through forest land or lands subject to fires from any cause, cut and remove from its right of way along such lands, all grass, brush or other inflammable materials whenever required by the commission; and shall provide each locomotive thereon with a practical and efficient spark arresting device, so constructed as to give the best practicable protection against the escape of fire and sparks from the smoke stacks thereof, and adequate devices to prevent the escape of fire from ash pans and furnaces which shall be used on such locomotives, and all said devices shall be approved by the public service commission and shall at all times be maintained in good repair.

2. The public service commission must upon the request of the conservation commission and on notice to the person or companies affected, require any person, railroad or other company having a railroad running through forest lands, to adopt such devices and precautions against setting fire upon its line in such forest lands as the public interest requires. The supreme court may on notice to the persons or corporations affected enforce compliance with any such order of the public service commission.

3. It shall be the duty of the superintendent of motive power or equivalent officer of each railroad acting as a common carrier to designate an employee of such railroad at each division point and round house who shall examine each locomotive each time it leaves the division point or round house between March first and December first, and report the condition of said devices; such reports to be kept on file for examination of inspectors and employees of the conservation commission.

4. No railroad company acting as a common carrier or employee thereof shall deposit fire coals or ashes on its track or right of way near forest lands. In case of fire on its own, or neighboring lands, the railroad company shall use all practicable means to put it out. Engineers, conductors or trainmen discovering or knowing of fires in fences or other material

along or near the right of way of the railroad in such lands, shall report the same at the first station to the station agent, and such station agent shall forthwith notify the nearest fire warden, forest ranger or district forest ranger thereof, and use all necessary means to extinguish the same.

Any person, railroad or other company failing or neglecting to comply with any of the provisions of this section, or any order of the public service commission made pursuant to the provisions of this section, shall be liable to a penalty of one hundred dollars for each day that it continues a violation thereof, and any officer or employee of a railroad or other company violating any provisions of this section or neglecting to comply with any requirement of the public service commission duly ordered, shall be liable to a penalty of one hundred dollars for every such violation. The term "logging road" as used in this chapter shall be construed to mean any railroad branch, line or division, or independent line, the chief or main business of which is the transportation of logs, lumber or other forest products. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 104. Fire inspectors—railroads.—The commission may divide the state into two districts and appoint one chief fire inspector for each district, who shall receive an annual salary of twelve hundred dollars and his necessary expenses, and such other fire inspectors, not exceeding four, as may be necessary, in the judgment of the commission, during seasons of the year when forest fires occur, and such inspectors shall serve along lines of steam and logging railroads. They shall inspect such railroads and the locomotive and logging engines thereon for the purposes of fire prevention as directed by the commission or superintendent of forests, reporting to the commission the condition thereof, and perform such other duties in preventing forest fires and protecting the forest as the superintendent of forests or the commission shall direct. They shall also have the powers of game protectors and shall each receive an annual salary of nine hundred dollars and necessary expenses. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 105. Rejection from service of defective engines.—The chief fire inspectors appointed by the conservation commission shall immediately report to the conservation commission any locomotive or logging engine which in the opinion of the said inspector is deficient in adequate design, construction or maintenance of the fire protective devices designated in section one hundred and three of this article, and any such locomotive or logging engine so reported shall not be continued in service after five days' notice from the conservation commission until such defects have been remedied to the satisfaction of the conservation commission. In case of disagreement between said conservation commission and the owner of the locomotive or logging engine so rejected from service, as to the efficiency or proper maintenance of said protective devices, then the owner

of said locomotive or logging engine may apply to the public service commission of the department in which the rejected locomotive or logging engine is located for a decision of said matter, but pending such decision the said locomotive or logging engine shall not be returned to service. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 106. **Fire protective devices on portable steam saw mills, engines and boilers.**—No person shall operate any donkey, traction or portable engine, portable steam saw mill, or any other engine, boiler or locomotive, which does not burn oil as fuel, in, through or near forest or brush land in the forest preserve counties, unless the same is provided with a screen or wire netting so constructed as to give the most practicable protection against the escape of sparks and cinders from the smoke stack thereof, and the most practicable devices to prevent the escape of fire from ash pans and fire boxes; any person violating the provisions of this section shall be guilty of a misdemeanor and be liable to a penalty of one hundred dollars for every violation, and in addition thereto shall be liable in treble damages to any person suffering damage by reason of such violation. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 107. **Proclamation by governor in times of drought.**—Whenever by reason of drought or other cause, it shall be dangerous to the forests of the state, or for other reason contrary to the public interest, for any person or persons to enter any portion of the lands within the forest preserve counties of the state for the purpose of camping out or taking fish, fowl, birds or quadrupeds therein, or for any person or persons being already within the forest preserve counties of the state to take fish, fowl, birds or quadrupeds therein, the governor shall have authority to determine and shall determine and declare that it is dangerous to the forests of the state, or contrary to the public interest, for any person or persons to enter any portion of the lands within the forest preserve counties of the state for the purpose of camping out or of taking fish, fowl, birds or quadrupeds therein, or for any person or persons being already within the forest preserve counties of the state to take fish, fowl, birds or quadrupeds therein, and upon such determination and declaration, the governor shall have authority to forbid, and shall forbid by proclamation, any person or persons from entering the said lands for such purposes, and any person or persons being already therein from taking fish, fowl, birds or quadrupeds therein. But the governor must state in such proclamation the reason or reasons why he has so determined that such acts would be dangerous to the forests or contrary to the public interest, and he must, in such proclamation, limit the time during which such entry and such acts shall be prohibited. And the governor shall have the right to extend the time for taking fowls or birds or quadrupeds to a time equivalent to the time during which the said entry and acts were forbidden. The governor must also, in such proclamation, order that it be published, and direct

the manner in which it shall be published, so as to give wide notice of its contents. Any person or persons violating the provisions of such proclamation shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of one hundred dollars or shall be imprisoned for not more than thirty days, or both, for each offense, in addition to the penalties herein provided for taking fish, fowl, birds or quadrupeds in the closed season. The said proclamation shall be published by the commission in such manner as shall be ordered and directed by the governor. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 108. **Statistics of forest products.**—The superintendent of forests shall annually report to the commission the amount of the lumber manufactured and wood used for commercial purposes from timber grown in the state. It shall be the duty of all manufacturers of lumber and consumers of round timber or wood for commercial purposes to report to the commission annually, when called upon so to do, on blanks to be furnished by the commission, the amount of round timber or wood used, or lumber manufactured during the calendar year. Any manufacturer of lumber or user of round wood or timber from trees grown in this state who neglects or refuses to furnish such information within ten days, after request by the superintendent of forests so to do, shall be liable to a penalty of one hundred dollars, to be collected in the same manner as other penalties imposed by this act. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 109. **Definitions.** The following words and phrases used in this chapter are defined as follows:—1. Forest preserve counties are those counties in which any lands therein, if acquired by the state, will become a part of the forest preserve.

2. The Adirondack park includes all lands, both state and private, embraced within the boundaries described in section fifty-one of this chapter.

3. The Catskill park includes all lands, both state and private, embraced within the boundaries described in section fifty-two of this chapter.

4. Trespass includes cutting, injuring, taking or removing trees of any size, or timber, or other property of the state, or entering upon the lands of the state with intent to cut, injure, take or remove trees of any size or timber or other property of the state.

5. Person includes a copartnership, joint-stock company or corporation. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 110. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 111. **Saving clause.**—The repeal of any laws, or parts thereof, set forth in the annexed schedule of laws repealed shall not affect or impair any act done, offense committed or right accruing, accrued or required,

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| L. 1912, ch. 318. | Fish and game. | § 112. |
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or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

§ 112. **When to take effect.**—This chapter shall take effect immediately. (*Added by L. 1912, ch. 444, in effect Apr. 16, 1912.*)

SCHEDULE OF LAWS REPEALED.

| Laws of | Chapter | Section |
|-----------|----------|--|
| 1909..... | 24..... | 1, 2, 4, 7, 19-27, both inclusive; 34-75, both inclusive; 136-140, both inclusive; 216-223, both inclusive. |
| 1909..... | 474..... | All that part of § 1, adding or amending the following sections: 2, 4, 40, 56, 67, 68, 69, 70, 71, 73, 74, 75a, 75b. |
| 1910..... | 72..... | 1 |
| 1910..... | 313..... | All |
| 1910..... | 476..... | All |
| 1910..... | 657..... | 3 |
| 1911..... | 529..... | All |
| 1911..... | 647..... | 50 and 51 |
| 1911..... | 835..... | All |

ARTICLE V

[Former article 5, §§ 150-178, repealed, and new article 5 inserted by L. 1912, ch. 318, in effect Apr. 15, 1912.]

FISH AND GAME.

| | |
|------|--|
| Part | I. Powers of commission (§§ 150-160). |
| | II. Game protectors (§§ 165-172). |
| | III. Ownership; Manner of taking; * Possession; Transportation and sale of wild game and fish restricted (§§ 175-182). |
| | IV. Licenses, hunting and trapping (§§ 185-187). |
| | V. Quadrupeds (§§ 190-203). |
| | VI. Birds (§§ 210-223). |
| | VII. Fish (§§ 230-257 *). |
| | VIII. Nets and netting (§§ 270-284). |
| | IX. Fishways (§§ 290-293). |

* So in original.

§§ 150, 151.

Fish and game.

L. 1912, ch. 318.

Part X. Marine fisheries (§§ 300-335).

XI. Private parks (§§ 360-366).

XII. Breeding; Importation and sale of fish and game (§§ 370-376).

XIII. Definitions and constructions (§§ 380-384).

PART I.

POWERS AND DUTIES OF COMMISSION.

Section 150. General powers and duties of commission.

151. Fish culturist.

152. * Power to prohibit or regulate the taking of fish or game.

153. Close seasons established.

154. Power of commission to dispose of fish and game seized.

155. Power to take fish.

156. Power to purchase fish eggs.

157. Power to acquire beaver, deer, moose or elk.

158. Power to take birds and quadrupeds.

159. Certificate to collect or possess for propagation, scientific or exhibition purposes.

160. Compilation of forest, fish and game law.

161. Observance of rules and regulations; penalty.

§ 150. General powers and duties of commission.—The commission shall have charge, control and management of the propagation and distribution of food and game fish, shell-fish, crustacea, and game. It shall have the conduct and control of all hatching and biological stations and game farms owned, operated or hereafter acquired by the state. The commission shall have charge of the enforcement of all laws for the protection of fish, shell-fish, crustacea, birds and quadrupeds; lands under water which have been or shall be designated, surveyed and mapped out pursuant to law, as oyster beds or shell-fish grounds, and power to grant leases of land under water for shell-fish culture according to law; power to make rules regulating the transportation, importation and exportation of game, fish, shell-fish and crustacea, and the taking of fish in any manner, other than angling, except as to migratory food fish of the sea within the limits of the marine district; the granting of licenses where the same are prescribed by law, the fixing of fees therefor and the terms thereof, and such other powers and duties as are or may be imposed upon said commission by law. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 151. Fish culturist.—The commission shall appoint a fish culturist who shall have charge under the direction of the commission of the culture of fish and shell-fish in the state. He shall receive an annual salary of four thousand dollars, and his actual and necessary traveling expenses

* So in original.

while in the performance of his official duty. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 152. **Petition for additional protection; notice of hearings; power to grant additional protection; notice of prohibition or regulation; penalties.**

1. *Petition for additional protection.* Any citizen of the state may file with the commission a petition in writing requesting it to give to any species of fish, other than migratory food fish of the sea, or game protected by law additional or other protection than that afforded by the provisions of this article. Such petition shall state the grounds upon which such protection is considered necessary, and shall be signed by the petitioner with his address.

2. *Notice of hearings.* The commission shall hold a public hearing in the locality or county to be affected upon the allegations of such petition within twenty days from the filing thereof. At least ten days prior to such hearing notice thereof, stating the time and place at which such hearing shall be held, shall be advertised in a newspaper published in the county to be affected by such additional or other protection. Such notice shall state the name and the address of the petitioner, together with a brief statement of the grounds upon which such application is made, and a copy thereof shall be mailed to the petitioner at the address given in such petition at least ten days before such hearing.

3. *Power to grant additional protection.* If upon such hearing the commission shall determine that such species of fish or game, by reason of disease, danger of extermination, or from any other cause or reason, requires such additional or other protection, in any locality or throughout the state, the commission shall have power to prohibit or regulate, during the open season therefor, the taking of such species of fish or game. Such prohibition or regulation may be made general throughout the state or confined to a particular part or district thereof.

4. *Notice of prohibition or regulation.* Any order made by the commission under the provisions of this section shall be signed by it, and entered in its minute book. At least thirty days before such prohibition or regulation shall take effect, copies of the same shall be filed in the office of the clerk issuing hunting and trapping licenses for the district to which the prohibition or regulation applies. It shall be the duty of said clerks to issue a copy of said prohibition or regulation to each person to whom a hunting or trapping license is issued by them; to mail a copy of such prohibition or regulation to each holder of a hunting and trapping license theretofore issued by them and at that time in effect, and to post a copy thereof in a conspicuous place in their office. At least thirty days before such prohibition or regulation shall take effect the commission shall cause a notice thereof to be advertised in a newspaper published in the county wherein such prohibition or regulation shall take effect.

5. *Penalties.* Any person violating the provisions of such prohibition,

§§ 153-155.

Fish and game.

L. 1912, ch. 318.

rule or regulation shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not to exceed one hundred dollars, or shall be imprisoned for not more than thirty days, or both, for each offense, in addition to the penalties hereinafter provided for taking fish, birds or quadrupeds in the close season. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 153. **Close season established; penalties.**—The commission may, on the request of a majority of the town board of any town, prohibit or regulate the taking of birds or game on lands set aside, with the consent of the owner or owners thereof, as bird and game refuges for a period of not to exceed ten years from the date set in the application. On a like request, when fish have been or shall be placed in waters of a town at the expense of the state, the commission may prohibit or regulate the taking of fish from such waters, for not to exceed five years from the first day of May next after such fish have been furnished. At least thirty days before such prohibition, rule or regulation shall take effect, a copy of the same shall be filed in the office of the clerk of the town to which the prohibition, rule or regulation applies. Printed notices of such prohibition, rule or regulation, at least one foot square, shall be posted along the boundaries of the land, or along the shores or banks of the waters affected, not more than fifty rods apart.

Penalties. Any person who shall violate or attempt to violate any such prohibition, rule or regulation is guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not to exceed one hundred dollars, or shall be imprisoned for not more than thirty days, or both, for each offense, in addition to the penalties hereinafter provided for taking fish, birds or quadrupeds in the close season. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 154. **Power of commission to dispose of game and fish seized.**—Whenever any fish, birds or quadrupeds, or parts thereof, are found in the possession or under the control of a person contrary to law, said fish, birds or quadrupeds, or parts thereof, shall be seized and confiscated in the name of the state, and the commission may in its discretion sell the same, or otherwise dispose of it, as the said commission may deem for the best interest of the state, and the same may be transported at any time for such purpose. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 155. **Power to take fish.**—The commission may take fish with nets at such times and in such manner as it may deem proper for the artificial propagation of fish. The commission may also remove, permit or cause to be removed from public or private waters, fish which hinder or prevent the propagation of game or food fish. Such removal shall be effected by any means and under such regulations as the commission may provide. Fish taken under this section may be disposed of and possessed under such

L. 1912, ch. 318.

Fish and game.

§§ 156-159.

regulations as the commission may establish. Any person not in charge of a state net who shall handle or take fish while confined therein, or shall fish within one hundred feet of any leader or net in use by the state shall be guilty of a misdemeanor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 156. **Power to purchase fish eggs.**—The commission may purchase from any person, fish eggs, paying for same in cash, or giving in exchange or in consideration therefor, a percentage of the young fish hatched or produced at any of the fish hatcheries of the state from the eggs so purchased; and the placing of such young fish in waters on lands of such persons shall not be deemed a stocking of such waters with fish by the state, or fish from state hatcheries. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 157. **Power to acquire beaver, deer, moose or elk by gift, purchase or capture.**—The commission may acquire by gift, purchase or capture a sufficient number of beaver, deer, moose or elk to stock the Adirondack region, and may care for and yard the same temporarily and liberate them in such region and at such times and places as it deems most conducive to their probable subsistence and increase. Deer may be taken alive at any time by the commission to restock the state's deer parks or to exchange for elk or moose. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 158. **Power to take birds and quadrupeds.**—In the event that any species of birds protected by the provisions of section two hundred and nineteen of this article, or quadrupeds protected by law, shall at any time, in any locality, become destructive of private or public property the commission shall have power in its discretion to direct any game protector, or issue a permit to any citizen of the state to take such species of birds or quadrupeds and dispose of the same in such manner as the commission may provide. Such permit shall expire within four months after the date of issuance. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 159. **Certificate to collect or possess for propagation, scientific or exhibition purposes.**—The commission may issue a certificate which shall be revocable at its pleasure to any person, permitting the holder to collect or possess quadrupeds, birds, birds' nests or eggs for propagation, scientific or exhibition purposes. Before such certificate is issued, every applicant, except a game protector, duly chartered museum or society incorporated for scientific or public exhibition purposes, or an officer thereof, must file written testimonials from two well-known scientific men; pay one dollar for the expense of issuing the certificate, and must file a bond in the penal sum of two hundred dollars with two responsible sureties, to be approved by the commission, conditioned that he will not violate the provisions of this article or avail himself of the privileges of said certificate for purposes other than as herein set forth. Persons receiving such certificates must report the result of collections made thereunder annually to the commission,

§§ 160, 161, 165.

Game protectors.

L. 1912, ch. 318.

at the expiration of the license. Such certificate shall be in force for one year only from the date of issue and shall not be transferable. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 160. **Compilation of forest, fish and game law.**—As soon as practicable after the adjournment of the legislature in each year, the commission shall make a compilation of the fish and game law, as amended at the date of such compilation, and properly index the same. Copies of said compilation sufficient in number for the purposes of this section shall be printed in pamphlet form of pocket size, under the direction of the clerks of the senate and assembly, and such clerks shall distribute them as follows: One hundred copies to each senator; fifty copies to each assemblyman; fifteen thousand copies to the commission for general distribution. It shall be the duty of the commission to prepare and issue a syllabus of the fish and game law as amended at the date of such compilation, and to supply and deliver to county, city and town clerks one copy of same for each person procuring a hunting or trapping license. Each person procuring a hunting or trapping license is entitled to one copy of said syllabus. (*Added by L. 1912, ch. 318, in effect Apr. 18, 1912.*)

§ 161. **Observance of rules and regulations; penalty.**—Every person shall obey, observe and comply with every order or rule made by the commission, under authority of this article; any person violating or attempting to violate any such rule or order shall be liable to a penalty of fifty dollars, unless otherwise specifically provided. (*Added by L. 1912, ch. 318, in effect Apr. 18, 1912.*)

PART II.

GAME PROTECTORS.

Section 165. Number and designation.

- 166. Rating of game protectors.
- 167. Game protectors to give bonds.
- 168. Compensation of game protectors.
- 169. Powers of game protectors.
- 170. Records and reports.
- 171. Special game protectors.
- 172. Sheriffs and constables.

§ 165. **Number and designation.**—The commission shall appoint one hundred twenty-five game protectors. The commission shall designate from the protectors a chief game protector, a deputy chief game protector, twelve division chief protectors, five fisheries protectors, and a protector for the Saint Lawrence river. The present chief game protector shall continue to be chief game protector, the present assistant chief game protectors shall continue to be division chief game protectors, the present Jamaica Bay protectors shall continue to be fisheries protectors, the pres-

L. 1912, ch. 318.

Game protectors.

§§ 166-168.

ent fisheries protectors shall continue to be fisheries protectors, the present protector for the Saint Lawrence river shall continue to be a game protector and the present game protectors shall continue to be game protectors. The chief game protector shall have general supervision and control of all protectors. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 166. Rating of game protectors.—The commission shall have power to remove, to suspend without pay, to reduce in rank, to act as a trial board in hearing and passing upon charges, and to rate all game protectors and fisheries protectors on the basis of merit and efficiency, in accordance with the provisions of the state civil service law. It shall rate all protectors on the basis of merit and efficiency in three grades, to be known as the first, second and third grades. Protectors rated in the first and second grades shall not be removed unless furnished with reasons for removal and given a hearing. The commission is empowered to make such rules and regulations as in its judgment are required to secure a proper rating of the protectors, or to carry out the provisions of this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 167. Game protectors to give bonds.—The chief game protector shall give a bond to the people of the state in the sum of one thousand dollars conditioned for the faithful discharge of his duties, with sureties to be approved by the commission. Every game protector shall give a like bond in the sum of five hundred dollars. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 168. Compensation of game protectors.—The chief game protector shall receive an annual salary of three thousand one hundred dollars, and his actual and necessary expenses while in the discharge of his official duties, not exceeding one thousand dollars a year. The deputy chief game protector shall receive an annual salary of twenty-four hundred dollars and his actual and necessary traveling expenses not exceeding one thousand dollars a year while in the performance of his official duties. Each division chief protector shall receive an annual salary of sixteen hundred dollars, and his actual and necessary traveling expenses, not exceeding seven hundred and fifty dollars a year. Each fisheries protector shall receive an annual salary of thirteen hundred dollars, and his actual and necessary traveling expenses, not exceeding seven hundred and fifty dollars. Each game protector shall receive an annual salary of nine hundred dollars and his actual and necessary traveling expenses, not exceeding six hundred dollars, provided, however, that each game protector who shall have been rated in the first grade for a full year shall receive increased salary at the rate of fifty dollars per annum for that year, and for each succeeding year that he shall so qualify until he shall receive the sum of thirteen hundred dollars per annum. Game protectors rated in the first grade only shall be

eligible for promotion. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 169. **Powers of game protectors.**—Game protectors, fire patrolmen, and fisheries protectors shall enforce all laws relating to fish, birds and quadrupeds; all laws of boards of supervisors relating to the same; and shall have power to execute all warrants and search warrants issued for a violation of this article; to serve subpoenas issued for the examination and investigation or trial of offenses against any of the provisions of said law; to make search where they have cause to believe that fish, birds or quadrupeds, or any parts thereof, are possessed in violation of law, and without search warrant to examine the contents of any boat, box, locker, basket, creel, crate, game bag or other package, and the contents of any building other than a dwelling house, to ascertain whether any of the provisions of this article or of any law for the protection of fish, shell-fish, birds and quadrupeds have been or are being violated, and to use such force as may be necessary for the purpose of such examination and inspection; and with a search warrant to search and examine the contents of any building or dwelling house; seize all quadrupeds, birds or fish, or any parts thereof possessed in violation of law, or showing evidence of illegal taking, and hold the same subject to the order of the commission; to arrest without warrant any person committing a misdemeanor under the provisions of this article in their presence, and take such person immediately before a magistrate having jurisdiction for trial, and to exercise such other powers of peace officers in the enforcement of the provisions of this chapter, or of judgments obtained for violations thereof as are not herein specifically provided. Any regular or special game protector, fisheries protector, fire superintendent or fire patrolman or inspector who shall compromise or settle any violation of the fish and game law out of court, or without the order of the commission shall be guilty of a misdemeanor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 170. **Records and reports.**—The chief game protector and division chief protectors shall make such reports as are required by the commission. Each game protector shall keep a daily record of his official acts, and report the same at the close of each week to the division chief of his division, and similarly report at the close of each month to the chief game protector. The salary and traveling expenses of a game protector shall not be payable except upon the certificate of the chief game protector that such protector has made the required report and properly performed his duty. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 171. **Special game protectors.**—The commission may in its discretion appoint a person as special game protector, and for this purpose may receive the recommendation of a majority of the supervisors of any county, or of any game club incorporated for the protection of fish and game.

L. 1912, ch. 318.

Taking fish and game.

§§ 172, 175, 176.

Such special game protectors shall hold office during the pleasure of the commission, and shall have the same powers as game protectors, and receive one-half of the fines and penalties less expenses. They shall make reports as required by the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 172. **Sheriffs and constables.**—Peace officers shall have the same powers as game protectors under this article, except the right to search without warrant. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART III.

OWNERSHIP; MANNER OF TAKING; LIMIT; POSSESSION; SALE AND TRANSPORTATION OF WILD GAME AND FISH RESTRICTED.

Section 175. Ownership.

- 176. Taking, limit, possession, sale and transportation of fish and game restricted.
- 177. Manner of taking fish and game.
- 178. Transportation, general, within the state; out of the state; into the state.
- 179. Transportation, special.
- 180. Prohibited, sale of certain * game birds.
- 181. Presumptive evidence.
- 182. Penalties.

§ 175. **Ownership.**—The ownership of, and the title to all fish, birds and quadrupeds in the state of New York, not held by private ownership, legally acquired, is hereby declared to be in the state. No fish, birds or quadrupeds shall be caught, taken or killed in any manner or at any time or had in possession, except the person so catching, taking or killing or having the same in possession shall consent that the title to such fish, birds and quadrupeds shall be and remain in the state of New York for the purpose of regulating and controlling the use and disposition of the same after such catching, taking or killing, except that the title to such fish, birds or quadrupeds legally taken shall vest in the person so taking or possessing the same, subject to the restrictions and provisions of law. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 176. **Taking, limit, possession, sale and transportation of game and fish restricted.**—No person shall at any time of the year, pursue, take, wound or kill, in any manner, number or quantity, any fish, quadrupeds or birds protected by law, or buy, sell, offer, or expose the same, or any part thereof, for sale, transport, or have the same in possession except as permitted by this article. Tip-ups, set and trap lines, spears, grappling hooks, naked hooks, snatch hooks, eel weirs and eel pots shall not be used to take fish except as specifically permitted by this article. Any person doing any act

* So in original.

prohibited by this article with reference to such fish, quadrupeds or birds or in aid of such prohibited taking, possession, purchase, sale or transportation, shall be deemed to have violated this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 177. Manner of taking fish and game.

1. *Manner of taking game.* Game protected by law shall only be taken in the day time after sunrise and before sunset with a gun fired at arm's length, without rest, unless otherwise specifically permitted by this article. A person may take birds and quadrupeds, during the open season therefor, with the aid of a dog, unless specifically prohibited by this article.

2. *Manner of taking fish.* Fish protected by law shall only be taken by angling, unless otherwise specifically permitted by this article. In case any fish or crustacea is unintentionally taken contrary to the prohibitions or restrictions contained in any of the provisions of this article, such fish or crustacea shall be immediately liberated and returned to the water, without unnecessary injury. Whenever any fish under the size limit prescribed by the provisions of this article are received in transportation from another state or country, or whenever such fish are taken in gill nets, the person receiving or taking the same shall immediately after the receipt thereof, or in case of taking, within eighteen hours after making harbor, docking, or landing, give notice by telegram to the commission of the receipt or taking of such fish, together with a statement of the kind and number thereof, and the place where the same are held, and shall care for and protect the same from spoiling, and shall properly ice, pack and ship said fish to such destination as the commission may direct. This section shall not in any way be construed as granting immunity from prosecution to any person who shall dispose or attempt to dispose of such fish in any other manner. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 178. Transportation, general; within the state; out of the state; into the state.

1. *Transportation, general.* No common carrier, or person in its employ while engaged in such business of common carrier, shall transport any wild game or fish, or any part thereof as owner. The reception or possession of game or fish, protected by law, or any part thereof, for shipment, by any person or common carrier within the state, or by any person in its employ, while engaged in the business of such common carrier unaccompanied by the owner thereof, or in any package unmarked, as herein provided, shall constitute a violation of this section by such person or common carrier.

2. *Within the state.* A person if accompanying the same may transport in one day, during the open season therefor, the number or limit of wild game or fish that he may lawfully take in one day except as provided by section one hundred and ninety hereof. If such game or fish be placed in the custody of a common carrier or transported in any package, the

said game or fish or any package containing the same, shall have affixed thereto a tag plainly marked with the kind and number of such game or fish, the names of the consignor and the consignee, the initial point of billing and the destination.

3. *Out of the state.* Wild game or fish protected by law if taken by a non-resident may be transported by him from any point within the state to a point out of the state, provided the same shall be accompanied by the actual owner thereof, and the said owner shall have first procured from the commission a license so to do. Such wild game or fish must be tagged and marked as provided in this section, and no more of any kind of fish or wild game shall be transported than the owner thereof may lawfully take in one day. Game imported from without the United States or raised in private preserves as provided in this article when duly marked and tagged may be transported out of the state unaccompanied by the owner thereof in any number or quantity.

4. *Into the state.* Any citizen of this state may, between the sixteenth day of September and the fifteenth day of January, both inclusive, bring into this state as his personal baggage for his private use, game or fish lawfully taken by him in any place outside of this state, provided that such game shall be taken not less than fifty miles from the border of this state, and may be lawfully brought from the state where taken, and further provided that the owner of said game shall have first obtained from the commission a license so to do, and that such game shall have been tagged at the point of shipment with tags furnished by the commission. Further provided that a person may bring into this state, during the open season therefor prescribed by this article, game lawfully taken without the state, without regard to the license, tagging or fifty mile restrictions. Said game and fish may be possessed during said period. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 179. **Transportation, special.**—Game and fish for propagation purposes, the head, hide, feet or fur of quadrupeds and the plumage or skin of game birds legally taken and possessed, may be transported without being marked as provided in section one hundred and seventy-eight hereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 180. **Prohibited; sale of certain birds.**—The dead bodies of birds belonging to all species or sub-species, native to this state, protected by law or belonging to any family, any species or sub-species of which is native to this state and protected by law shall not be sold, offered for sale, or possessed for sale for food purposes within this state whether taken within or without this state, except as provided by sections three hundred and seventy-two and three hundred and seventy-three. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 181. **Presumptive evidence.**—Possession of quadrupeds, birds or fish,
 SUP. III—7

§§ 182, 185.

Licenses.

L. 1912, ch. 318.

or any part thereof, during the time when the taking of the same in this state is prohibited, or when the possession of the same after the close of the open season for the taking thereof is permitted, shall be presumptive evidence that the same was unlawfully taken by the possessor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 182. **Penalties.**—A person who violates any of the provisions of this part, or of any lawful rule or regulation of the commission, is guilty of a misdemeanor, and in addition thereto, is liable as follows: to a penalty of sixty dollars and an additional penalty of twenty-five dollars for each fish, bird, or quadruped, or part of fish, bird or quadruped bought, sold, offered for sale, taken, possessed, transported or had in possession for sale or transportation in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART IV.

LICENSES: HUNTING AND TRAPPING.

Section 185. * Hunting and trapping license.

186. Non-resident trapping license.

187. Penalties.

§ 185. **Hunting and trapping license; application therefor; fees; disposition of fees; contents and power under; carrying and exhibiting same; termination; exception; alteration; prosecutions by individuals; proceeds of actions; costs; form of license; non-resident coupons; clerks' reports; clerks reimbursed for expenses.**

1. *Hunting and trapping license.* No person or persons shall at any time hunt,* pursue or kill with a gun, any of the wild animals, fowl or birds that are protected during any part of the year, or take with traps or other devices any fur bearing animals, or engage in hunting or trapping except as herein provided, without first having procured a license so to do, and then only during the respective periods of the year when it shall be lawful.

2. *Application therefor.* Said license shall be procured from any county, city or town clerk in the following manner, to wit: The applicant shall fill out a blank application to be furnished by the commission through the clerk of each county, city or town, stating name, age, occupation and place of residence and post-office address of applicant, also whether a citizen of the United States or an alien and such other facts or descriptions as may be required by the commission. Said application shall be subscribed and sworn to by the applicant before any officer authorized to administer oaths in the state of New York. Any false statement contained in such application shall render the license null and void. Any person who shall make any false statement in * a application for a license, shall be deemed

* So in original.

guilty of perjury, and, on conviction thereof, shall be subject to the penalties provided for the commission of perjury.

3. *Fees.* Said applicant, if a non-resident of the state, an unnaturalized person, or an alien, shall pay to the clerk countersigning and delivering the license the sum of twenty dollars, together with the sum of fifty cents as a fee to the clerk, except as provided in section one hundred and eighty-six hereof, and if a resident of the state, shall pay to the clerk countersigning and issuing the license the sum of one dollar as a license fee, together with the sum of ten cents as the fee of the county, city or town clerk for issuing such license, and if a non-resident of the state and a taxpayer therein at the time of making such application shall pay to the clerk countersigning and issuing the license the sum of ten dollars together with the sum of fifty cents as a fee to the clerk, except as provided in section one hundred and eighty-six hereof.

4. *Disposition of fees.* The license fees above provided for shall be remitted by the city and town clerks on the first Tuesday of each month to the county clerk of the county, and such fees together with those received by the county clerk for issuing licenses from his office shall be remitted to the commission on the second Tuesday of each month with a schedule setting forth the name and residence of each licensee and the amount paid, and shall by him be remitted to the state treasurer as are fines and penalties. The commissioner shall pay to each county clerk the sum of three per centum of the total amount of such license money received from such county clerk.

5. *Contents and power under.* Said license shall bear the signature of the commission, and the seal of the county, city or town in which the same is issued and be countersigned by the said clerk. Every license issued shall be signed by the licensee in ink, as aforesaid, and shall entitle the person to whom issued to hunt, pursue and kill game animals, fowl and birds and trap fur bearing animals within the state at any time when or place where it shall be lawful to hunt, pursue, kill and take such game animals, fowl and birds in this state.

6. *Carrying and exhibiting same.* No person to whom a license has been issued shall be entitled to hunt, pursue, kill or take game animals, fowl and birds or trap fur bearing animals in this state unless at the time of such hunting, trapping, pursuing or killing or taking, he or she shall have such license on his or her person, and shall exhibit the same for inspection to any protector or other officer or other person requesting to see the same.

7. *Termination.* Such license shall be void after the thirty-first day of December next succeeding its issuance.

8. *Exception.* Provided that the owner or owners of farm land, and their immediate family or families occupying and cultivating the same, or the lessee or lessees thereof and their immediate family or families who are actually occupying and cultivating the same, shall have the right to

hunt, kill and take game or trap fur bearing animals on the farm land of which he or they are the bona fide owners or lessees, during the season when it is lawful to kill and take the same, without procuring such resident license; and further provided that minors under the age of sixteen years shall not be required to take out a license to trap fur bearing animals.

9. *Alteration.* Any person who shall at any time alter or change in any material manner or loan or transfer to another, any license issued as aforesaid, shall be deemed guilty of a forgery in the second degree, and, on conviction thereof, shall be subject to the penalties provided for the commission of forgery in the second degree.

10. *Prosecution by individuals.* All prosecutions for a violation of the provisions of this article relating to licenses may be brought by any person upon order of the commission in the name of the people of the state of New York against any person or persons violating any of the provisions of this article, so far as it relates to licenses, before any court of competent jurisdiction; and it is hereby made the duty of all district attorneys to see that the provisions of this section are enforced in their respective counties, and said district attorneys shall prosecute all offenders on receiving information of the violation of any of the provisions of this section; and it is hereby made the duty of all sheriffs, deputy sheriffs, constables and police officers to inform against and prosecute all persons who, there is reasonable cause to believe, are guilty of violating any of the provisions of this section. Nothing herein shall prevent the commission from prosecuting persons for violation of this section.

11. *Proceeds of actions.* All moneys recovered in any penal action under this chapter, in so far as it relates to licenses, shall be remitted by the person or court recovering the same to the commission; one-half of the amount recovered in any penal action under this section, in so far as it relates to licenses, after all disbursements and expenses in relation to the same, including attorney's fees, shall have been paid, shall be paid to the person filing the complaint in such action by the state treasurer on approval of the commission, unless such person is a regular game protector.

12. *Costs.* All bills for costs, disbursements and attorney's fees in any action or proceeding under this article relating to licenses shall be duly verified, presented to the commission, audited by said commission and paid on its approval by the state treasurer to the person entitled to the same.

13. *Form of license.* The form of the license shall be determined and the license blank prepared by the commission, and by it furnished through the county clerks of the several counties of the state to the city and town clerks.

14. *Non-resident coupons.* Each non-resident license shall have attached one coupon permitting the transportation out of the state of one deer or parts thereof, under conditions to be prescribed by the commission.

15. *Clerk's reports.* On the thirty-first day of December of each year the city and town clerks shall detach the stubs of licenses issued and forward the same securely attached to a report of the number issued and the amount of license money received to the county clerk of the county, whose duty it shall be to see that proper returns are made to him by all city and town clerks in his county, and to return to the commission all such stubs and reports with a final report recapitulating and tabulating the total number of licenses of all kinds issued in his county in the calendar year.

16. *Clerks reimbursed for expenses.* The county clerk shall be reimbursed by the state for postage and expressage used in distributing licenses to city and town clerks and for his monthly reports required to be made to the commission; his bills therefor shall be presented, audited and paid as herein provided for other payments. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 186. *Non-resident trapping licenses.*—No person or persons who are non-residents of the state shall engage in trapping fur bearing animals without first having procured a license so to do, and then only during the respective periods of the year when it shall be lawful. Said license shall be procured in the manner provided in section one hundred and eighty-five hereof, and said applicant shall pay to the clerk countersigning and delivering the license the sum of ten dollars as a license fee for a trapping license, together with the sum of fifty cents as a fee to the clerk. The provisions of section one hundred and eighty-five or so far as the same are applicable to licenses shall apply to all licenses issued under this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 187. *Penalties.*—Any public officer or person who violates or fails to perform any duty imposed by any of the provisions of this article is guilty of a misdemeanor, unless otherwise provided, and shall be liable to a penalty of sixty dollars; any licensee shall be liable to an additional penalty of twenty-five dollars for each bird or quadruped, or part of bird or quadruped taken or possessed in violation thereof. A non-resident or alien who violates any of the provisions of sections one hundred and eighty-five and one hundred and eighty-six is guilty of a misdemeanor, and in addition thereto as follows: To a penalty of one hundred dollars and an additional penalty of twenty-five dollars for each fish, bird or quadruped, or part of fish, bird or quadruped taken or possessed in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART V.

QUADRUPEDS.

Section 190. Wild deer; open season; limit; manner of taking.

191. Possession of wild deer or venison.

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| §§ 190-192. | Fish and game; quadrupeds. | L. 1912, ch. 318. |
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- Section 192. Deer; open season, special.
- 193. Dogs to be killed.
 - 194. Wild moose, elk, caribou and antelope.
 - 195. Black and gray squirrels; open season; limit.
 - 196. Hares and rabbits; open season; limit; sale.
 - 197. Beaver; close season.
 - 198. Mink, raccoon and sable; open season.
 - 199. Skunk.
 - 200. Propagation of skunks permitted; bond.
 - 201. Muskrat; open season.
 - 202. Land turtles.
 - 203. Penalties.

§ 190. Wild deer; open season; limit; manner of taking; sale of.—1. *Open season.* Wild deer having horns not less than three inches in length may be taken from October first to November fifteenth, both inclusive, in wholly inclosed deer parks and in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Oneida, Oswego, Saratoga, St. Lawrence, Warren, and Washington, except in all that portion of Oneida, Lewis, and Jefferson counties lying westerly of the Utica and Black River railroad, from Utica to Ogdensburg.

2. *Limit.* A person may take two such wild deer in an open season, and may transport or possess for that purpose one carcass or part thereof at any one time, if accompanied by the actual owner.

3. *Manner of taking.* Wild deer may be taken only on land. No jacklight or other artificial light, trap, saltlick, or other device to entrap or entice deer shall be used, made or set, nor shall any deer be taken by aid or use thereof. Deer shall not be hunted, pursued or killed by any dog or bitch. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 191. Possession of wild deer or venison.—Wild deer or venison lawfully taken may be possessed from October first to November twentieth, both inclusive. A person may possess such deer or venison from November twenty-first to January first, both inclusive, provided a license so to do shall first be obtained from the commission. Deer or venison so possessed shall at all times be marked or tagged in such manner as the commission may provide. If possession of deer is obtained for transportation after October first and before midnight of November sixteenth, it may, when accompanied by the owner, lawfully remain in the possession of a common carrier the additional time necessary to deliver the same to its destination. Possession of deer or venison, or any part thereof, from November sixteenth to January first, both inclusive, shall be presumptive evidence that the same was unlawfully taken. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 192. Deer, open season, special.—Wild deer having horns not less than three inches in length may be taken in Ulster county and in the towns of Neversink, Cohecton, Tusten, Highland, Lumberland, Forestburg, and

L. 1912, ch. 318.

Fish and game; quadrupeds.

§§ 193-196.

Bethel, and all that section of the towns of Mamakating and Thompson, lying south of the Newburgh and Cohecton turnpike, in Sullivan county, and the town of Deerpik in Orange county, from November first to November fifteenth, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 193. **Dogs to be killed.**—Dogs shall not be permitted by the owner or persons harboring the same to run at large in or to be taken into forests inhabited by deer or kept or possessed in the Adirondack park. If any dog or bitch be in the forest preserve or found hunting, pursuing or killing deer or running at large in forests inhabited by deer, it shall be presumptive evidence of a violation of this section by the person owning, using, having or harboring such dog or bitch. Any person may, and it shall be the duty of every game protector to kill any dog or bitch found in the Adirondack park or in a deer forest, or pursuing deer and no action for damages shall be maintained against a person for such killing. No dog or bitch shall be taken into or harbored in any hunting or lumber camp within the forest preserve. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 194. **Wild moose; elk; caribou and antelope.**—There shall be no open season for wild moose, elk, caribou and antelope; but they may be brought into the state for breeding purposes. The flesh or any portion of any such animal may be possessed or transported by the owner thereof during the open season for deer, provided such animal was killed by the owner thereof, in a private park within the state. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 195. **Black and gray squirrels; open season; limit.**

1. *Open season.* Black and gray squirrels may be taken and possessed from September sixteenth to October thirty-first, both inclusive, except on Long Island, where they may be taken and possessed from November first to December thirty-first, both inclusive. No person shall take black or gray squirrels within the corporate limits of any city or village.

2. *Limit.* A person may take five such squirrels, either all of one kind or partly of each, in one day. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 196. **Hares and rabbits; open season; limit; sale.**

1. *Open season.* The open season for varying hares and cottontail rabbits shall be as follows: Varying hares may be taken and possessed from November first to January thirty-first, both inclusive. Cottontail rabbits may be taken and possessed from October first to December thirty-first, both inclusive. The use of ferrets is at all times prohibited, except as hereinafter provided. The owners or occupants of inclosed or occupied farms and lands or a person duly authorized in writing by such owner or

§§ 197-203.

Fish and game; quadrupeds.

L. 1912, ch. 318.

occupant may take in any manner at any time and in any number varying hares and cottontail rabbits which are injuring their property.

2. *Limit.* A person may take six varying hares or cottontail rabbits in one day.

3. *Sale.* Varying hares and cottontail rabbits may be bought and sold during the open season for the taking thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 197. **Beaver; closed season.**—No person shall take or possess beaver at any time or molest or disturb any wild beaver or the dams, houses, homes or abiding places of same, except as permitted in section one hundred and fifty-eight, part one. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 198. **Mink, raccoon and sable; open season.**—Mink, raccoon and sable may be taken in any manner and possessed from November first to March first, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 199. **Skunk.**—Skunk may be taken in any manner, except by digging them out of their holes or dens, and possessed from November first to January thirty-first, both inclusive. Skunks which are injuring property or have become a nuisance may be taken at any time in any manner. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 200. **Propagation of skunks permitted; bond.**—It shall be lawful to keep live skunks in captivity at all times for purposes of propagation and sale only, provided a license so to do shall first have been obtained from the commission. No skunks shall be thus kept which are taken wild during the close season for skunks, and skunks so kept shall not be disposed of in any way during the close season. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 201. **Muskrat; open season.**—Muskrat may be taken in any manner and possessed from November tenth to April first, both inclusive. Muskrat houses shall not be molested, injured or disturbed at any time. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 202. **Land turtles.**—Taking, killing or exposing for sale of all land turtles or tortoises, including the box turtle and the wood turtle, is hereby prohibited. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 203. **Penalties.**—A person who violates any provision of this part is guilty of a misdemeanor and in addition thereto, is liable as follows: For each violation of sections one hundred and ninety to one hundred and ninety-four, both inclusive, to a penalty of one hundred dollars, and to an additional penalty of one hundred dollars, for each deer, elk, moose, caribou, antelope, or part of any such animal taken, possessed, purchased, sold, possessed for sale or offered for sale contrary to law;

L. 1912, ch. 318.

Fish and game; birds.

§§ 210, 211.

for each violation of section one hundred and ninety-five and one hundred and ninety-six, to a penalty of twenty-five dollars, and to an additional penalty of ten dollars for each squirrel, hare or rabbit or part thereof, taken or possessed, purchased, sold, possessed for sale or offered for sale contrary to law; for each violation of section one hundred and ninety-seven, to a penalty of fifty dollars, and to an additional penalty of fifty dollars for each beaver taken or possessed contrary to law; for each violation of sections one hundred and ninety-eight and two hundred and one, to a penalty of twenty-five dollars; and for each violation of section one hundred and ninety-nine to a penalty of ten dollars; for each violation of any of the provisions, for which a penalty is not specifically provided, to a penalty of fifty dollars; a person convicted for a violation of section one hundred and ninety-four shall be punished by imprisonment for a term of not less than three months nor more than one year. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART VI.

BIRDS.

Section 210. Game birds defined.

- 211. Water fowl; open season; limit; manner of taking.
- 212. Water fowl, open season, manner of taking, special.
- 213. Rails, American coots, et cetera, open season, limit.
- 214. Upland game birds, open season, limit.
- 215. Upland game birds, open season, special.
- 216. Shore birds or waders, open season, limit.
- 217. Shore birds, open season, special.
- 218. Antwerp or homing pigeons.
- 219. Certain wild birds protected.
- 220. Prohibited, destroying or robbing nests.
- 221. Prohibited, snares, nets, and traps.
- 222. Prohibited, taking of game on certain lands.
- 223. Penalties.

§ 210. Game birds defined.—For the purpose of this act the following only shall be considered game birds:

The anatidae or water fowl, commonly known as geese, brant, swans and river and sea ducks;

The rallidae, commonly known as rails, American coots, mud hens and gallinules;

The gallinae, or upland game birds, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges and quail;

The limicolae, or shore birds, commonly known as woodcock, snipe, plover, surfbirds, sandpipers, tatlors and curlews. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 211. Anatidae or water fowl; open season; limit; manner of taking.

1. *Open season.* Water fowl, wild and domestic, may be taken from

§§ 212-214.

Fish and game; birds.

L. 1912, ch. 318.

September sixteenth to January tenth, both inclusive. They may be possessed from September sixteenth to January fifteenth, both inclusive. There shall be no open season for wood duck and swan.

2. *Limit.* A person may take during the open season, not to exceed twenty-five water fowl in the aggregate of all kinds in one day. Whenever two or more persons are occupying the same boat, battery or blind, not to exceed forty water fowl in the aggregate of all kinds may be taken in one day by such persons.

3. *Manner of taking.* Water fowl may be taken during the open season from a rowboat, from the land, from a blind or floating device used to conceal the hunter (other than a sail or power boat) when the same shall be within fifty feet of the shore or of a natural growth of flags. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 212. Water fowl; open season; manner of taking; special.

1. *Open season.* Water fowl on Long Island and the waters adjacent thereto may be taken from October first to January tenth, both inclusive.

2. *Manner of taking.* Water fowl may be taken by aid of any floating device other than sailboats or power boats, at any distance from shore on Long Island Sound, Shinnecock, Gardiner and Peconic bays, during the open season therefor, and except from October first to October nineteenth, both inclusive, in Great South Bay west of Smith's Point and east of the Nassau-Suffolk county line. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 213. *Rallidae*; open season; limit.

1. *Open season.* Rails, American coots, mud hens and gallinules may be taken and possessed from September sixteenth to December thirty-first, both inclusive.

2. *Limit.* A person may take during the open season not to exceed fifteen of such birds in the aggregate of all kinds in one day. Whenever two or more persons are occupying the same boat or blind, not to exceed twenty of such birds shall be taken in the aggregate of all kinds in one day by such persons. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 214. Gallinae or upland game birds; open season; limit; quail; grouse; pheasant.—Upland game birds may be taken and possessed as follows:

1. *Quail.* October first to November fifteenth, both inclusive. A person may take not to exceed six quail in one day and thirty-six in the open season.

2. *Grouse.* October first to November thirtieth, both inclusive. A person may take not to exceed four grouse in one day and twenty in the open season.

3. *Wild pheasants.* On Thursdays in the month of October and pos-

L. 1912, ch. 318.

Fish and game; birds.

§§ 215-219.

sessed during the said month of October. Only wild male pheasants may be taken. A person may take and possess not to exceed three wild male pheasants in the open season.

4. *Partridge*. There shall be no open season for Hungarian or European gray legged partridge. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 215. **Upland game birds; open season, limit, special.**—Quail, pheasants, and grouse may be taken and possessed on Long Island from November first to December thirty-first, both inclusive. A person may take not to exceed six male pheasants in any one day and thirty-six in the open season on Long Island. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 216. **Limicolae or shore birds; open season; limit.**—Shore birds may be taken and possessed as follows:

1. *Woodcock*. October first to November fifteenth, both inclusive. A person may take not to exceed four woodcock in one day and twenty in the open season.

2. *Snipe, plover, surfbirds, sandpipers, tattlers and curlews*. September sixteenth to November thirtieth, both inclusive. A person may take not to exceed fifteen shore birds in the aggregate of all kinds in one day. Whenever two or more persons are occupying the same boat or blind not to exceed twenty-five shore birds may be taken in the aggregate of all kinds in one day by such persons. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 217. **Shore birds; open season, special.**—Shore birds may be taken and possessed on Long Island as follows:

1. *Woodcock*. October fifteenth to November thirtieth, both inclusive.

2. *Snipe, plover, surfbirds, sandpipers, tattlers and curlews*. September first to November thirtieth, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 218. **Antwerp or homing pigeons.**—No person shall take or interfere with any Antwerp or homing pigeon if it have the name of its owner stamped upon its wing or tail, or wear a ring or seamless leg band with its registered number stamped thereon, or have any other distinguishing mark; nor shall any person remove any such distinguishing mark from any such pigeon. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 219. **Certain wild birds protected.**—Wild birds other than the English sparrow, starling, crow, hawk, crow-blackbird, snow-owl, great horned owl and kingfisher shall not be taken or possessed at any time, dead or alive, except under the authority of a certificate issued under this article. No part of the plumage, skin or body of any bird protected by this section or of any birds coming from without the state, whether belonging to the same or a different species from that native to the state of New York, provided

§§ 220-223.

Fish and game; birds.

L. 1912, ch. 318.

such birds belong to the same family as those protected by this article, shall be sold or had in possession for sale. The provision of this section shall not apply to game birds for which an open season is provided in this article. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 220. **Destroying or robbing nests.**—Nests of wild birds other than the English sparrow, starling, crow, hawk, crow-blackbird, snow-owl, great horned owl and kingfisher shall not be robbed or wilfully destroyed, except when necessary to protect buildings or prevent their defacement, or when taken under the authority of the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 221. **No snares, nets or traps.**—No wild bird, or bird for which a close season is provided, shall be trapped, netted or snared, or, if so taken, possessed. No net, trap or snare for taking pheasants, grouse or quail, shall be set, placed or used where such birds can be taken. Any such net, trap or snare is declared to be a public nuisance, and may be summarily abated and destroyed by any person, and it shall be the duty of every protector to seize and destroy any such device. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 222. **Game shall not be taken on certain public lands.**—Game shall not be taken on the lands purchased or condemned by any municipality within the state for the purpose of supplying any municipality with water and protecting the same from pollution and contamination, or on any public highway, except public highways within the forest preserve counties. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 223. **Penalties.**—A person who violates any of the provisions of this part, or who violates or fails to perform any duty imposed by any provisions of this part, is guilty of a misdemeanor, and in addition thereto as follows: to a penalty of sixty dollars and an additional penalty of twenty-five dollars for each bird, or part of a bird, taken or possessed, or had in possession in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART VII.

FISH.

Section 230. **Sale of minnows for bait.**

231. **Bass.**

232. **Trout.**

233. **Trout, special.**

234. **Lake trout and whitefish.**

235. **Lake trout and whitefish, special.**

236. **Pikeperch.**

237. **Pickereel and pike.**

238. **Sturgeon.**

239. **Maskalonge.**

240. **Striped bass.**

L. 1912, ch. 318. Fish and game; fish. §§ 230-233.

- Section 241. Smelt or icefish.
 242. Prohibited; stocking private waters.
 243. Prohibited; disturbing bass, trout and lake trout while spawning.
 244. Prohibited; thumping.
 245. Prohibited; explosives.
 246. Prohibited; obstructing streams.
 247. Prohibited; polluting streams.
 248. Prohibited; polluting waters used by state fish hatcheries.
 249. Prohibited; drawing off water.
 250. Prohibited; placing fish in certain waters.
 251. Prohibited; fishing near fishways.
 252. Prohibited; taking fish through the ice in certain waters.
 253. Tip-ups.
 254. Set and trap lines.
 255. Spearing.
 256. Eel weirs and eel pots.
 257. Frogs.
 258. Penalties.

§ 230. Sale of minnows for bait.—No person shall take minnows for bait with a net, trap or seine or sell minnows so taken without having first obtained a license so to do from the commission. Provided, however, that no license shall be required from a person to take minnows for his own use and not for sale. Minnows shall not be taken within one hundred feet of any dock, pier or boat landing structure along the Saint Lawrence river without the consent of the owner thereof, nor shall they be taken with a net, trap or seine in waters inhabited by trout. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 231. Bass; open season; limit.

1. *Open season.* Black bass not less than ten inches in length may be taken and possessed from June sixteenth to November thirtieth, both inclusive.
2. *Size of catch.* A person may take not to exceed fifteen such black bass in one day, but whenever two or more persons are angling from the same boat they may take not to exceed twenty-five in one day.

§ 232. Trout; open season; limit.

1. *Open season.* Trout not less than six inches in length may be taken and possessed from May first to August thirty-first, both inclusive.
2. *Size of catch.* A person may take not to exceed ten pounds of trout in one day. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 233. Trout; open season; special.—Trout may be taken and possessed on Long Island from April first to August thirty-first, both inclusive. Rainbow trout may be taken and possessed on Long Island from April sixteenth to September thirtieth, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 234. Lake trout and whitefish; open season and size limit; catch; sale of.

1. *Open season and size limit.* Lake trout not less than fifteen inches in length and whitefish not less than twelve inches in length may be taken and possessed from April first to September thirtieth, both inclusive.

2. Otsego whitefish, commonly called Otsego bass, not less than nine inches in length may be taken and possessed from January first to October thirty-first, both inclusive.

3. *Size of catch.* A person may take by angling not to exceed ten lake trout in one day, but whenever two or more persons are angling from the same boat they may take not to exceed fifteen in one day. Whitefish may be taken in any number or quantity.

4. *Sale of.* Such lake trout and whitefish may be bought and sold during the open season therefor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 235. Lake trout and whitefish; open season; special.—Lake trout and whitefish may be taken in Lakes Erie and Ontario in any number or quantity at any time, and when so taken may be possessed. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 236. Pike perch; open season; size limit; sale of.—1. *Open season and size limit.* Pike perch not less than twelve inches in length may be taken and possessed in any number or quantity from May first to March first, both inclusive.

2. *Sale of.* Such pike perch may be bought and sold during the open season therefor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 237. Pickerel and pike; open season and limit; sale of.

1. *Open season.* Pickerel and pike in any number or quantity may be taken and possessed from May first to March first, both inclusive, except as herein provided.

2. *Limit.* In the Saint Lawrence river a person may take in one day not to exceed twelve great northern pike, locally known as "pickerel" not less than twenty inches in length.

3. *Sale of.* Such pickerel and pike may be bought and sold during the open season therefor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 238. Shortnosed sturgeon; lake sturgeon; sea sturgeon; open season and size limit; sale of.

1. *Open season and size limit.* Shortnosed sturgeon not less than twenty inches in length may be taken and possessed from July first to April thirtieth, both inclusive, in any number or quantity. Lake sturgeon not less than thirty inches in length, and sea sturgeon not less than four feet in length may be taken and possessed in any number or quantity at any time.

2. *Sale of.* Such sturgeon may be bought and sold during the open season therefor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 239. Maskalonge; open season and size limit; sale of.

1. *Open season and size limit.* Maskalonge not less than twenty-four inches in length may be taken and possessed from June sixteenth to December thirty-first, both inclusive, in any number or quantity. No person shall take maskalonge through the ice.

2. *Sale of.* Such maskalonge may be bought and sold during the open season therefor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 240. Striped bass; size limit; sale of.—Striped bass not less than twelve inches in length may be taken by angling and with nets and possessed and sold in any number or quantity at any time. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 241. Smelt or icefish; open season and size limit; sale of.

1. *Open season and size limit.* Smelt or icefish not less than six inches in length may be taken from the inland waters of the state in any number or quantity at any time.

2. *Possession and sale of.* Such smelt or icefish may be possessed, bought and sold at any time. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 242. Prohibited stocking private waters.—Trout or lake trout shall not be taken from any of the waters of the state for the purpose of stocking private ponds or streams. Provided, however, that any person desirous of aiding the state in the propagation and distribution of trout, may on approval of the commission, take trout spawn from public waters for breeding purposes. Trout or spawn so taken shall be returned to public waters of the state. Before permission is given, or trout taken as herein provided, the applicant shall show conclusively that he has facilities for breeding trout, and must execute a satisfactory bond to the people of the state, to be approved by the commission, conditioned that he will not sell, give away, convert to his own use, or otherwise dispose of any trout, or spawn taken under said permit, and will return the adult and young trout to public waters at such times and places as the commission may designate. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 243. Prohibited; disturbing bass, trout, and lake trout while spawning.—Bass, trout and lake trout on spawning beds in the close season shall not be disturbed, nor shall their spawn or milt be taken from the spawning beds except as provided by the preceding section, and section one hundred and fifty-five. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 244. Prohibited; thumping.—Sailing, rowing, pushing or floating in any boat or vessel in a waterway, river, run or channel, bay or sound, or patrolling the banks of such waterway, river, run or channel, bay or

§§ 245-248.

Fish and game; fish.

L. 1912, ch. 318.

sound, and stamping, jumping, shouting, pounding, beating or splashing the water, beating or pounding the banks, or boat while a seine or net is set, drawn, held, or used in such waterway, river, run or channel, bay or sound, with intent to drive fish into such seine, or net, which acts are commonly known as thumping, are hereby forbidden. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 245. **Prohibited; explosives.**—Fish shall not be taken by means of explosives. Except for mining or mechanical purposes, dynamite or other explosives shall not be used in any of the waters of this state, or possessed upon the waters, shores or islands thereof. Possession thereof by any person on the waters, shores or islands thereof, of this state shall be presumptive evidence that the same is possessed for use in violation of the provision of this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 246. **Prohibited; obstructing streams.**—Except as provided in section two hundred and fifty-six or as directed by the commission, no person shall by means of any rack, screen, weir, or other obstruction in any creek, stream or river, prevent the passage of fish protected by law. The commission may order such an obstruction to be removed by the person erecting the same or by the owner of the land on which the same is located, by serving on such person or owner a written notice so to do. Failure to comply with the terms of such notice within ten days after service of the same shall be deemed a violation of this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 247. **Prohibited; polluting streams.**—No dye-stuffs, coal tar, refuse from a gas house, cheese factory, creamery, condensery or canning factory, sawdust, shavings, tanbark, lime or other deleterious or poisonous substance shall be thrown or allowed to run into any waters, either private or public in quantities injurious to fish life inhabiting the same, or injurious to the propagation of fish therein. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 248. **Prohibited; polluting of waters used by state fish hatcheries.**—No person shall erect or maintain any privy, watercloset, pigsty, hogpen, inclosure for poultry, barn or barnyard in which animals or poultry are kept, or drain from any building or the cellar thereof, where drainage or refuse therefrom will flow into or find its way into water used by any fish hatchery operated by the state, or into any pond, creek or stream used in connection therewith. Every such privy, watercloset, pigsty, hogpen, enclosure, barn, barnyard and drain is hereby declared to be a public nuisance, and may be summarily abated by the commission. No person shall place sewage or other matter injurious to fish where the same can find its way into water used by any fish hatchery operated by the state, or suffer the same to be done from, over or through premises owned or occupied by him. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 249. **Prohibited; drawing off water.**—No person shall take fish by shutting or drawing off water for that purpose. No person shall hold back the water in any stream which supplies a state hatchery so as to prevent the necessary flow of sufficient water for hatchery purposes. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 250. **Prohibited; placing fish in certain waters.**—Fish or eggs thereof other than trout, lake trout, frostfish, whitefish and smelt, shall not be placed in any waters of the state inhabited or stocked with trout. No person shall put or place in any public waters of the state fish commonly known as carp, nor shall any person put or place in such waters the spawn of such fish or use such fish as bait in the water thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 251. **Prohibited; fishing near fishways.**—The commission shall maintain fifty rods from every fishway erected by the state in public waters on both sides of the stream above and below the fishway, signboards containing substantially the following notice: "Fifty rods to the fishway; all persons are prohibited by law from fishing in this stream between this point and the fishway." No person shall take fish within fifty rods of any such fishway. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 252. **Prohibited; taking fish through the ice in certain waters.**—No person shall take fish through the ice in waters inhabited by trout. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 253. **Tip-ups.**—Tip-ups may be used, except in waters inhabited by trout, to take bullheads, catfish, eels, perch, sunfish, and except during the months of March and April, pikeperch, pike and pickerel. No person shall operate or control at the same time more than fifteen tip-ups. All tip-ups must be marked with the name and address of the owner thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 254. **Set and trap lines.**—Set lines may be used except in waters inhabited by trout to take whitefish, bullheads, catfish, eels, perch, sunfish, carp, mullet and dogfish, provided a permit for so doing shall first be obtained from the commission. Set and trap lines may be used to take sturgeon in any waters during the open season therefor, provided a license for so doing shall first be obtained from the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 255. **Spearing.**—Spears, grappling hooks, naked hooks or snatch hooks may be used, except in waters inhabited by trout, for taking whitefish, mullet, carp, catfish, dogfish, bullheads, suckers and eels at any time, provided a permit so to do shall first be obtained from the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 256. **Eel weirs and eel pots.**—Eel weirs and eel pots of such form as
SUP. III—8

§§ 257, 258.

Fish and game; fish.

L. 1912, ch. 318.

may be prescribed by the commission may be used at any time for taking eels, provided a license for so doing shall first be obtained from the commission. Eel weirs shall not be used in waters inhabited by trout. This section shall not apply to waters of the marine district. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 257. **Frogs.**—Bullfrogs, green frogs, and spring frogs may be taken in any manner, possessed, bought and sold from June first to March thirty-first, both inclusive. They shall not be taken, possessed, bought or sold at any other time. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 258. **Penalties.**—A person who violates any of the provisions of this part is guilty of a misdemeanor, and in addition thereto is liable as follows: For each violation of sections two hundred and forty-five, two hundred and forty-seven and two hundred and forty-eight, a penalty of five hundred dollars, and ten dollars for each fish taken, possessed, bought or sold in violation thereof; of sections two hundred and forty-three and two hundred and forty-nine to a penalty of sixty dollars, and a penalty of ten dollars for each fish taken or possessed or placed in the waters in violation thereof; of section two hundred and forty-six, a penalty of twenty-five dollars, and an additional penalty of ten dollars for each day the order of the commission is not complied with. A person convicted of a misdemeanor as provided by any of the provisions of sections two hundred and forty-five, two hundred and forty-seven and two hundred and forty-eight shall be liable to imprisonment for not exceeding one year and in addition to the penalties herein prescribed; for a violation of any of the other provisions of this part for which a penalty is not specifically prescribed, or of any rule or regulation of the commission, a penalty of twenty-five dollars, and an additional penalty of ten dollars for each fish taken or possessed, bought or sold in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART VIII.

NETS AND NETTING.

- Section 270. Nets to be licensed.
- 271. Fish which may be taken with nets.
- 272. Size of mesh.
- 273. Hauling of nets regulated.
- 274. Nets to be tagged and buoyed.
- 275. Prohibited; use of nets in certain waters.
- 276. Nets in Lakes Erie and Ontario.
- 277. Niagara river.
- 278. Nets in Chaumont bay and adjacent waters.
- 279. Nets in Hudson and Delaware rivers and adjacent waters.
- 280. Application of this part.
- 281. Vessels to carry employees of commission.
- 282. Nets to be destroyed.

Section 283. Seizure of nets; regulations in certain waters.

284. Penalties.

§ 270. **Nets to be licensed.**—Seines, gills, fykes, pounds, traps, scaps and other nets or devices may be set or used in any of the waters of the state provided a license so to do shall be first obtained from the commission and not otherwise. Rules regulating the use of seines, gills, fykes, pounds, traps, scaps and other nets or devices in any of the waters of the state, and providing for the licensing of such nets, together with a license fee therefor, may from time to time be prescribed by the commission when not inconsistent with law, and such rules shall be filed in the office of the commission. Until amended or superseded as herein authorized, the rules as filed with the secretary of state on the twenty-fifth day of June, nineteen hundred and ten, are continued in force. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 271. **Fish which may be taken with nets.**—When permitted by the commission lake trout, whitefish, pickerel, pike, pike perch, shad, herring, striped bass, smelt or icefish and sturgeon of all kinds, of the size limit and during the open season therefor as prescribed in part seven of this article, and all fish not protected by law may be taken by nets in waters of the state, in any number or quantity. For the purpose of supervising the taking of fish with nets the commission is empowered to designate from the protectors a superintendent of inland fisheries at a salary of not to exceed twenty-five hundred dollars per annum, and his actual and necessary expenses while in the performance of his official duties, not to exceed one thousand dollars. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 272. **Size of mesh.**—When permitted the size of mesh of nets shall be as follows:

1. Gill or other movable nets used for taking lake trout or whitefish, not less than two and three-eighths inch bar. For taking Otsego whitefish, commonly called Otsego bass, not less than one and one-half inch bar.

2. Gill or other nets used for taking fish other than lake trout and whitefish, not less than one and one-eighth inch bar. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 273. **Prohibited; use of nets in certain waters.**—No nets or other devices for taking fish shall be hauled after sunset and before sunrise. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 274. **Nets to be tagged and buoyed.**—All nets or other devices for taking fish permitted under this part shall be buoyed and tagged in such manner as may be prescribed by the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 275. **Prohibited; use of nets in certain waters.**—In waters inhabited by trout the use of nets of any kind is prohibited. This prohibition shall

not apply to landing nets used to land fish duly hooked by angling or to use of nets by the commission as provided in section one hundred and fifty-five of this chapter. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 276. **Nets in Lakes Erie and Ontario.**—Fish, except black bass and maskalonge may be taken with nets during the open season therefor in the waters of Lake Erie, except within one-half mile of the shores or islands thereof and within five miles of the mouth of Cattaraugus creek during the open season; and in Lake Ontario, from May first to September thirtieth, both inclusive, except within one mile of the shores or islands thereof and within three miles of the mouth of the Niagara river during the open season; and from October first to April thirtieth, both inclusive, except within one-half mile of the shores or islands thereof and within three miles of the mouth of the Niagara river, during the open season. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 277. **Niagara river.**—Seines and squat nets may be used to take fish except black bass, laketrout, whitefish and maskalonge in the Niagara river in November, December, January and March. Fish except black bass, pike perch, laketrout, whitefish, pickerel and maskalonge may be taken by seine, machine or trap by citizens of the state in that part of the Niagara river in the town of Lewiston, Niagara county, during the time when Canadians may lawfully fish with such devices in said river on the Canada side opposite the town of Lewiston, provided a license therefor has been granted by the commission, and provided that laketrout and whitefish must not be taken during November and December. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 278. **Nets in Chaumont bay and adjacent waters.**—Fish, except black bass and maskalonge, may be taken with nets during the open season therefor in the waters and bays of Lake Ontario, in the county of Jefferson between Horse island in the town of Hounsfield and the town line between the towns of Lyme and Cape Vincent, except the waters within one-half mile of Stoney island, Calf island or of the Galloup islands from October first to May fifteenth, both inclusive. Sturgeon may be taken with sturgeon nets of not less than five inch bar at any time. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 279. **Nets in Hudson and Delaware rivers and adjacent waters.**—Shad and herring may be taken with drifting nets operated by hand only from March fifteenth to June fifteenth, both inclusive, in the Delaware river and that part of the Hudson river below the dam at Troy and north of Verplanck's Point. No such net shall be set, placed or drawn, or fish taken therefrom between sunset on Friday and sunrise on Monday. Fish, except salmon, black bass, trout, pike perch, and except also during March and April, pickerel and pike may be taken with nets in the Hudson river below the dam at Troy, from September first to May thirtieth, both inclusive.

L. 1912, ch. 318.

Fish and game; nets.

§§ 280-284.

Sturgeon may be taken in the Hudson river with sturgeon nets of not less than five and one-half inch bar, from June first to September first, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 280. **Application of this part.**—The provisions of part eight of this article, except sections two hundred and eighty-two and two hundred and eighty-three, shall only apply to the taking of fish from Lakes Erie and Ontario, the Hudson river north of Verplanck's Point and the inland waters of the state. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 281. **Vessels to carry employees of commission.**—Any person owning or operating a boat or vessel used for the taking of fish shall, at any time, permit game protectors or other employees of the commission to board such boats and inspect the cargo or contents, and shall at any time carry such persons for the purposes of inspecting nets or the hauling of the same, or the taking of fish eggs. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 282. **Nets to be destroyed.**—Seines, fykes, pounds, traps and other nets not authorized by law, had, set or used in or upon any of the inland or tidal waters of the state or on the shores thereof, or islands surrounded by said waters are hereby declared to be public nuisances, and shall be summarily seized, abated and destroyed by any game protector or by a private person, or may be sold by the commission at public auction to the highest bidder under rules and regulations established by it; provided, however, the commission may direct a game protector to retain certain nets or seines for the use of the state hatcheries. Possession of nets other than as provided for by this part at any time by any person within five hundred feet of the shores of any waters of the state shall be presumptive evidence that the same were unlawfully used. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 283. **Seizure of nets; regulations in certain counties.**—The reasonable expense of the seizure, removal or destruction of any net, pound or other illegal device shall be a county charge against the county in which the same shall be seized, and shall be audited and paid as a county charge on verified statement of the game protector making the seizure, stating the time and place of such destruction, the name of the person or persons employed, the time spent and money paid, if any, therein. The board of supervisors of any county may, by resolution, make such further regulation in the presentation of said statement and the destruction of said devices as it may deem proper. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 284. **Penalties.**—Any person violating any of the provisions of any section of this part or of any rule or regulation of the commission prescribed hereunder shall be guilty of a misdemeanor and shall be punishable by a fine of not less than fifty dollars, nor more than two hundred dollars,

§§ 290-293.

Fishways.

L. 1912, ch. 318.

or by imprisonment for a term of not less than sixty days nor more than four months, or by both such fine and imprisonment, and in addition thereto shall be liable as follows: To a penalty of five dollars for each fish taken or possessed in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART IX.

FISHWAYS.

Section 290. Notice of construction of dam.

291. Fishways ordered.

292. Power of commission to construct fishways.

293. Penalties.

§ 290. Notice of construction of dam.—Before the construction of a dam is commenced on any of the inland waters of the state, the plan thereof, and a statement of the name, length and location of the waters on which the dam is to be built shall be given to the commission by the person, or if by public authority, by the official directing or permitting the work. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 291. Fishways ordered.—The commission shall by an order entered in its minutes and served by copy on any person or official direct the construction of fishways in proper form in any dam heretofore or hereafter built, or if there be fishways, such changes therein as will make them efficient. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 292. Power of commission to construct fishways.—In case of the failure, refusal or neglect of any person owning, maintaining or constructing a dam to comply with the order of the commission to build, repair or change any fishway, the commission may build, repair or change the same in accordance with the terms of its order, and in the name of the people recover of such person the expenses of such construction, repairs or changes, and the same shall be a lien on the premises upon which the dam is located. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 293. Penalties.—A person who violates any provision of this part, or who violates any rule or order of the commission made under the provisions of this part, is liable to a penalty of five dollars for every day such violation continues. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART X.

MARINE FISHERIES.

Section 300. Marine district described.

301. Bureau of marine fisheries.

302. Office and clerical force.

303. Reports relating to shellfish.

L. 1912, ch. 318.

Marine fisheries.

§§ 300-302.

- Section 304. Leases for cultivation of shellfish; limitations.
305. Collection of rents.
306. Settlement of disputes as to shellfish leases.
307. Provisions for taxation; statement of property; penalty; assessment of tax.
308. Levy and payment of tax.
309. Collection of tax.
310. Sanitary inspection of shellfish grounds.
311. Duties of state commissioner of health.
312. Record and certificate of inspection; notice of condition of public shellfish grounds.
313. Prohibited, sale of shellfish, unless sanitary condition be certified.
314. Taking oysters in South bay.
315. Blue Point oysters.
316. Oyster beds protected.
317. Dredging and raking for shellfish.
318. Scallops, size limit.
319. Residents only to take shellfish.
320. Star-fish to be destroyed.
321. Prohibited; taking of lobsters under certain size.
322. Size of openings in lobster traps.
323. Residents only to take lobsters, except in certain waters.
324. Licenses for vessels.
325. Polluting waters.
326. Garbage not to be thrown in certain waters.
327. Prohibited; use of nets in inlets.
328. Prohibited; nets in the Harlem river and adjacent waters.
329. Richmond county and Raritan bay.
330. Jamaica bay and adjacent waters.
331. Size of mesh in Coney Island creek.
332. Rockaway bay, Jones' inlet and adjacent waters.
333. Recording and fees.
334. Supervisors of Nassau and Suffolk counties.
335. Penalties.

§ 300. Marine district described.—The marine district shall include all waters in and adjacent to Long Island and all tidal waters of the state, except the Hudson river north of Verplanck's Point. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 301. Bureau of marine fisheries.—There shall continue to be a bureau of marine fisheries under the supervision and control of the commission, and under the immediate direction of the deputy in charge of the division of fish and game, who shall administer the affairs of such bureau relating to shellfish and shell fisheries, either directly or by such subordinate as the commission may provide and designate for that purpose. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 302. Office and clerical force.—The commission may appoint for the bureau of marine fisheries a supervisor of marine fisheries who shall have a salary of three thousand dollars a year and the expenses necessarily incurred by him in the discharge of his official duties not to exceed one

thousand dollars, a deputy supervisor of marine fisheries who shall have a salary of two thousand dollars a year and the expenses necessarily incurred by him in the discharge of his official duties not to exceed one thousand dollars, a cashier who shall also perform the duties of bookkeeper who shall have a salary of two thousand dollars a year, a surveyor who shall have a salary of two thousand dollars a year and the expenses necessarily incurred by him in the discharge of his official duties not to exceed seven hundred dollars a year, one confidential secretary who shall have a salary of eighteen hundred dollars a year, one or more bacteriologists and such clerical assistants as are actually needed for which appropriation shall have been made by the legislature. The supervisor, the deputy supervisor and the cashier shall take and subscribe the constitutional oath of office, and shall each execute and file a bond to the people of the state in the sum of five thousand dollars with sureties approved by the commission, conditioned for the faithful performance of their duties and to account for and pay over pursuant to law, all moneys received by them or either of them in their office. During the absence or inability to act of the supervisor, the deputy supervisor shall have and exercise all the power of the supervisor. All the officers and employees of the bureau of marine fisheries shall hold office during the pleasure of the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 303. **Reports relating to shellfish.**—The supervisor shall, on or before the fifth day of each month, make a report to the deputy in charge of the division of fish and game of his proceedings for the preceding calendar month. He shall include in such report a detailed statement of his receipts from all sources, together with a statement of all land under water disposed of for shellfish cultivation and all such lands surrendered to the state, together with such other facts relating to the matters within his jurisdiction as he may deem necessary. He shall also in like manner make an annual report to the deputy commissioner of the same matters for the year ending with the first day of January preceding. In making the annual reports provided for in section twelve of the conservation law, the commission and deputy commissioner in charge of the division of fish and game shall include in such reports in addition to the matters required in said section a statement of all land under water disposed of for shellfish cultivation and all such lands surrendered to the state. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 304. **Leases for cultivation of shellfish; letting to be at public auction; re-leasing; reports; marking grounds; leases not transferable; summary proceedings; limitations.**—1. *Leases for cultivation of shellfish.* The supervisor, under the direction and supervision of the commission, may lease lands under water for the cultivation of shellfish to persons who have resided in the state one year or more, but oyster beds of natural growth shall not be leased unless the same have for five years failed to produce

natural oysters in sufficient quantities to enable persons engaged in the taking thereof, to earn a livelihood by working on such lands.

2. *Letting to be at public auction.* Before a lease is made notice thereof must be posted for at least three weeks in a conspicuous place in the office of the supervisor, in the office of the town clerk and in the post-office nearest to the land applied for. The letting shall be at public auction, to the highest bidder, and the commission shall classify the lands applied for in accordance with their value and fix a minimum price at which the lease may be awarded, but such price shall in no case be less than twenty-five cents an acre annually and in no case shall term of the lease exceed fifteen years.

3. *Re-leasing.* On the expiration of any lease or within ninety days prior thereto and upon it being shown to the satisfaction of the commission that the lands described therein have in good faith been used for shellfish cultivation continuously during the preceding term for which such lease was granted, the lessee, owner or holder of said lease shall have the privilege of re-leasing such lands for a period not exceeding fifteen years, upon such terms as may be agreed upon between said lessee and the supervisor, subject to the approval of the commission, but the rental shall in no case be less than twenty-five cents per acre annually. Upon the failure to agree on terms for the re-leasing of such lands, the holder of such original lease shall be allowed an extension of one year for the purpose of removing from the grounds so leased all shellfish belonging to him upon such ground, and such extension shall be made at the terms named in such original lease.

4. *Reports.* Every person holding a lease or franchise shall report annually to the supervisor, on blanks provided for that purpose, such information as the commission may deem necessary.

5. *Marking grounds.* A lessee shall immediately mark the grounds leased, by stakes, buoys or monuments, which shall be maintained by him, his successors or assigns during the continuance of the lease.

6. *Leases not transferable.* Leases shall not be transferable in whole or in part, except to persons who might have been original lessees.

7. *Summary proceedings.* The commission may immediately oust from such lands, tenants whose rent is in arrears or who fail or refuse to report as herein provided, and thereupon the lease held by such delinquent shall become null and void. The provisions of chapter seventeen, title two of the code of civil procedure shall apply and govern the procedure in such cases.

8. *Limitations.* This section shall not be construed as limiting the power of the commissioners of the land office to grant land under water, but any grant of land actually occupied and in use for cultivation of shellfish shall be subject to the right of the occupant to occupy and use such land for at least two years, and no grant of land by such commissioners of the land office shall thereafter be used for the cultivation of shellfish, nor

shall the public be excluded therefrom for the purpose of taking shellfish. Nor shall it apply to any of the excepted lands named in section three hundred and seven of this chapter. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 305. **Collection of rents.**—The supervisors may, under the direction of the commission, in the name of the people of the state, sue for, collect, compromise, compound or satisfy rents which now are or may hereafter be in arrears on leases by the state, of land under water, for the cultivation of shellfish and make such rebates thereon as in his judgment are just and equitable, provided the sum accepted on such compromise or settlement shall in no case be less than twenty-five cents an acre annually. In cases where a grantee or assignee of the grantee of lands for shellfish cultivation is desirous of surrendering such lands, the supervisor in his discretion shall, in case such person is not indebted to the commission for rentals or otherwise, receive an assignment of such lands to the state of New York and cause such assignment to be recorded in his office. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 306. **Settlement of disputes as to shellfish leases.**—The supervisor shall have jurisdiction to hear all controversies which have arisen or may arise with regard to the leasing of lands under water for the cultivation of shellfish, and to determine the same upon just and equitable terms to be approved by the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 307. **Provisions for taxation; statement of property; penalty; assessment of tax.**

1. *Statement of property.* All owners, lessees or persons in possession of shellfish grounds within the state of New York, shall, on or before the thirtieth day of September, annually, deliver to the supervisor at his office a statement under oath, specifying the number of acres of shellfish grounds owned, leased or used by them on the first day of August preceding, and the location, description and value thereof and whether held under grant, lease or otherwise, and printed blanks shall be prepared by the commission and furnished upon application at the office of the bureau of marine fisheries. But in case an owner, lessee or persons in possession as aforesaid shall have made a previous statement and shall make and file an affidavit of such fact on or before September thirtieth in each year, showing that no change has been made in his or their holding as rendered in the previous statement, then such previous statement shall be taken as the statement for the year in which the affidavit is filed.

2. *Penalty.* In case of the failure of any such person to deliver such statement to said supervisor at his office within the time above specified, or, if any statement so delivered to him shall erroneously state the number of acres subject to the tax hereinafter imposed, said supervisor shall make up

a statement from the best information he may obtain, and shall add for such default to the tax hereinafter provided a penalty of twenty per centum of the amount of such tax.

3. *Assessment of tax.* The said supervisor shall annually make up and keep a book in his office to be known as the assessment book, in which he shall set down alphabetically the names and addresses of the owners, lessees or persons in possession of all shellfish ground within the state, the number of acres held or possessed by them and the location thereof as shown by the statements aforesaid, the amount of the tax payable thereon as hereinafter provided, and any penalty thereon; such assessment book shall also contain columns for the date of payment of such tax and the amount of tax and penalty paid. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 308. *Levy of tax; notice and grievance; payment of tax; tax in lieu of other taxes; limitations.*—1. *Levy of tax.* For the benefit of the state and for the protection and fostering of the shell fisheries thereof, and the maintenance of an efficient office or bureau, an annual tax at the rate of twenty-five cents per acre shall be levied and assessed upon each and every acre of shellfish ground located within this state owned, leased or possessed by any person whatsoever. The commission shall annually, and before the first day of February, levy and assess the said tax upon the property described in the statement made as aforesaid, setting forth the amount thereof, and any penalty added thereto, in the assessment book, as provided in the last section.

2. *Notice and grievance.* The commission shall thereupon serve notice on all persons whose lands are so assessed, and on which a tax is levied hereunder, which notice shall be in writing and may be served personally or by mailing the same to the last known post-office address of such person, stating that such tax roll has been completed and is on file in the office of the supervisor, the number of acres so assessed and the amount of the tax thereon, the penalties incurred, if any, and that on a day therein stated, which shall be not less than five days from the date of such notice, the supervisor or the deputy in charge of the division of fish and game will hear the complaint of all persons declaring themselves aggrieved thereby, and on such hearing sections thirty-six and thirty-seven of the tax law shall apply so far as the same are applicable and such assessment may be reviewed by certiorari in the manner provided in the tax law for the review of erroneous or illegal assessments.

3. *Payment of tax.* Such tax shall be paid to the said commission at the office of the supervisor within sixty days after the first day of February in each year, and he shall give a proper receipt therefor, and immediately enter such payment upon the assessment book with the date of payment. Such tax and any penalty thereon shall be a first lien upon all the property subject thereto, including the shellfish thereon from the first day of February in the year in which such tax is laid.

4. *Tax in lieu of other taxes.* The tax hereby imposed shall be in lieu of all other taxes on such property, and no other tax except as provided in this article shall be levied or imposed on said shellfish grounds, or the shellfish thereon, by any authority whatever.

5. *Limitations.* Sections one hundred and fifty, three hundred and six, three hundred and seven, three hundred and eight, three hundred and nine and three hundred and ten of this chapter do not apply to or affect lands under water, held and in possession under colonial patents, or legislative grants, by any town or person in the counties of Kings, Queens, Suffolk, Nassau or Richmond, or to lands under the waters of Gardiners and Peconic bays, ceded by the state to the county of Suffolk, pursuant to chapter three hundred and eighty-five of the laws of eighteen hundred and eighty-four, as amended by chapter six hundred and forty of the laws of nineteen hundred and six. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 309. *Collection of tax.*—If any tax so laid shall not be paid on or before the first day of April, the said supervisor shall make and issue his warrant, in the name of the commission, for the collection thereof, with interest thereon, at one per centum per month from the day such tax became due and payable, and until paid, which warrant shall be delivered to the sheriff of the county within whose jurisdiction the lands are situated, directing such sheriff to collect such tax, together with the penalty and interest, if any, due thereon, together with his fees for making such collection, and such sheriff is hereby authorized, empowered and required in default of such payment to sell the property described in such warrant in the manner provided by law for a sale under execution, and to deliver to the purchaser thereof a proper deed or assignment, as the case may be, and such warrant shall immediately be returned to said supervisor by said sheriff with all his proceedings indorsed thereon, and he shall pay over to said supervisor the money received upon such sale, and said supervisor shall apply the same to the payment of such tax and all interest and expenses thereon, including the expenses of such sale, returning any balance that may remain to such owner or owners. All moneys received by said supervisor in payment of taxes and interest thereon shall be accounted for and paid by said supervisor to the state treasurer, for the benefit of the state, within thirty days after its receipt. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 310. *Sanitary inspection of shellfish grounds; cancellation of certificate; service of notice; report.*—1. *Sanitary inspection of shellfish grounds.* It shall be the duty of the supervisor within one year from the passage of this act, or within such further time as it may require to complete the same and annually thereafter, to cause to be inspected and examined by a competent bacteriologist, appointed by the commission, all shellfish grounds and other places within the state from which shellfish are taken, to be marketed and sold for consumption, with a view to ascertaining the sanitary condition

L. 1912, ch. 318.

Marine fisheries.

§§ 311, 312.

of such shellfish grounds and other places, and the fitness of the shellfish in such places, or which are taken therefrom, for use as articles of food.

2. *Cancellation of certificate.* The commission may, if it deems it necessary at any time, have the whole or any part of such lands and waters inspected, and if the shellfish thereon are found unfit for consumption, cause a certificate of inspection thereof, theretofore issued, to be canceled on ten days' written notice to the holder.

3. *Service of notice.* Such notice shall be in writing and shall be served on the person to whom the certificate is issued, and may be served by delivering the same to him personally or by post by letter addressed to the person on whom it is to be served at his last known place of residence, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the person is a corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation.

4. *Report.* Such bacteriologist shall immediately after each examination and inspection make a report thereof to the supervisor of the sanitary condition of the various shellfish grounds and other places and their products inspected and examined by him. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 311. **Duties of state commissioner of health.**—For the purpose of making such inspection, the commission may request the state commissioner of health to designate and assign, and it shall be the duty of the state commissioner of health, upon such application, to designate and assign one or more sanitary inspectors who shall, under the direction of the supervisor of marine fisheries, visit such shellfish grounds and places, and examine them, and the shellfish found thereon or therein, and immediately report to said supervisor the result of such examination. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 312. **Record and certificate of inspection; fee; termination; revocation; transfer; notice of condition of public shellfish grounds.**—1. *Record and certificate of inspection.* The supervisor shall determine from either or both of the reports mentioned, or such other inspection as he may order in the two preceding sections, whether such shellfish grounds and the product thereof are in a sanitary condition. He shall keep or cause to be kept an official record of such examination and inspection, and shall immediately thereafter issue a certificate setting forth the date and the result of such examination and inspection to the owners, lessees or persons in possession of such oyster beds and other shellfish grounds as shall be found to be in good sanitary condition and the product of which shall be found fit for use as food. The said certificate shall also state the name, place of residence and post-office address of the owner, lessee or person in possession of the grounds from which oysters or other shellfish are taken, or upon

which the same have been planted or cultivated, and shall contain a brief description of the said shellfish grounds, their location by lot number, if possible, and the number of acres in each lot or parcel.

2. *Revocation.* The supervisor may revoke any certificate as to any lot or parcel which may thereafter become unsanitary, and a new certificate shall in such case be issued for the remaining lots or parcels without fee.

3. *Transfer.* In case any shellfish grounds or parcels thereof are sold or leases thereof transferred, a new certificate shall be issued to the purchaser or purchasers thereof upon application to the supervisor.

4. *Notice of conditions of public shellfish grounds.* The supervisor shall, after examination and inspection of public shellfish grounds, give to the public, notice of the result of such examination and inspection. Such notice shall be published in a newspaper published in the county and posted in three public and conspicuous places in the town in which said shellfish grounds are located. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 313. **Prohibited sale of shellfish unless sanitary condition be certified; certificate to be furnished.**—1. *Sale of shellfish prohibited unless sanitary condition be certified.* After such notice or report of sanitary condition as prescribed in sections three hundred and ten, three hundred and eleven and three hundred and twelve of this chapter, has been given, any person who shall ship, sell, cause to be sold, or offer or expose for sale within this state, for consumption as food, any oyster or other shellfish taken from shellfish grounds or places within the jurisdiction of or forming part of the state of New York, which have not been so certified to be in good sanitary condition and the product of which has not been so certified to be fit for use as food, shall be guilty of a misdemeanor.

2. *Certificate to be furnished.* The supervisor, at the request of any person interested, shall furnish a certificate of the result of any such examination where the shellfish are reported as not fit for consumption. Every certificate, duly signed and acknowledged, of a bacteriologist or other expert employed by the commission or any analysis, examination or inspection made by such bacteriologist or expert with respect to any matter or product which the commission has authority to examine, or cause to be examined, shall be presumptive evidence of the facts therein stated. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 314. **Taking oysters in South bay.**—Oysters, spawn or shells shall not be taken from South bay in Suffolk county from the public waters of this state from May thirty-first to September first, both inclusive; or taken between sunset and sunrise at any season. Oyster shells taken from the public waters of said bay in said county shall be returned to the water where taken within ten minutes after being taken. Blade or scraper tongs, commonly known as dredges, used to take shellfish shall not be used on public lands in waters of said bay in said county. This section is subject

to the provisions of section three hundred and thirty-four of this article. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 315. **Blue point oysters.**—No person, firm or corporation shall sell or offer for sale any oysters, or label or brand any package containing oysters for shipment or sale, under the name of blue point oysters, other than oysters that have been planted and cultivated at least three months in the waters of Great South bay in Suffolk county. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 316. **Shellfish beds protected.**—Shellfish shall not be taken from sunset until sunrise. No person shall take, carry away, interfere with or disturb oysters or clams of another lawfully planted or cultivated, or remove any stakes, buoys or boundary marks of a planted or cultivated bed. The possession of dredges, rakes or tongs overboard on any such beds shall be deemed prima facie evidence of a violation of this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 317. **Dredging and raking for shellfish.**—Dredges for taking of shellfish from public or unleased lands shall not be operated from any boat propelled otherwise than by sail or oars. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 318. **Scallops; size limit.**—Scallops shall not be taken from public lands or possessed, if less than one year old and measuring less than two inches in greatest diameter. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 319. **Resident only to take shellfish.**—No person who has not been an actual resident of this state for six months immediately prior to the time of engaging in the taking of shellfish, shall take shellfish from the public lands in or under the waters of this state. Nothing in this section shall apply to a person who may be employed as a deck hand, engineer or fireman on a boat whose captain or owner may be a lawful resident. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 320. **Starfish to be destroyed.**—Starfish and other natural enemies of shellfish shall be destroyed when taken, and shall not be returned alive to the waters of the state. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 321. **Prohibited; taking of lobsters under certain size.**—Lobsters less than four and one-eighth inches measured on the carapace shall not be taken, possessed or sold. No person shall at any time take any female lobsters in spawn or with eggs attached, unless upon the written order of the state fish culturist or the supervisor. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 322. **Size of openings in lobster traps.**—All lobster traps constructed or used after the thirty-first day of December, nineteen hundred and fourteen, shall have the laths not less than one and one-half inches apart.

The space between such laths must remain clear and undiminished. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 323. **Residents only to take lobsters, except in certain waters.**—No person who has not been an actual resident of this state for six months immediately prior to the time of engaging in the taking of lobsters, shall take lobsters from the public waters of the state, except that in the public waters of the state lying to the north and east of a line drawn from Gardiner's Point to Orient Point and thence extended in the same direction until it intersects with the state boundary line between New York and Connecticut, licenses to take lobsters may be issued to non-residents upon payment of the following fees: For boats of ten or more tons measurement, thirty-five dollars; for boats of five to ten tons measurement, twenty-five dollars; for all other boats, twenty dollars, except that for boats carrying one man only the license fee shall be fifteen dollars. Such boats, when so licensed, shall carry displayed upon them the license number, of such size and placed in such position upon the boat or rigging as may be prescribed by the commission. Such licenses shall not be transferable and shall be conditioned that the holder shall observe the fishery laws of this state, and shall at any time and without delay permit protectors and peace officers of this state to board such boats and inspect the cargo or contents. All such licenses shall expire upon the thirty-first day of December following the date of issue, and any license may be revoked at any time at the pleasure of the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 324. **Licenses for vessels; non-residents; unlawful use of food fish.**—1. There shall be a license fee of fifty dollars per annum for each steam vessel of fifty tons or over and twenty-five dollars for every other vessel engaged in fishing with nets in the tidal waters of the state, for the purpose of making oil or fertilizer from the fish product taken. The owner or owners, lessee or lessees, or persons operating, running, managing or fishing with any such vessel, using the same in fishing with nets in the tidal waters of the state for the purpose of making oil or fertilizer from fish products taken, who shall not before engaging in such business procure of the commission such license as herein provided, shall be guilty of a misdemeanor and punishable by a fine of not less than three hundred dollars for each offense.

2. *Non-residents.* Non-residents of the state engaged in fishing with nets in the tidal waters of the state for food fish shall be required to pay a license fee of five dollars to the state for each vessel used in fishing with nets in such waters. A non-resident using any vessel for the purpose of taking fish with nets from the tidal waters of the state, or within three nautical miles of the coast line, without first having obtained from the commission the necessary license or licenses as herein provided, is guilty of a misdemeanor and shall be liable to a penalty of one hundred dollars, and to an additional penalty of twenty-five dollars for each vessel so used.

3. *Unlawful use of food fish.* It shall be unlawful for any person, corporation, copartnership or firm to engage in taking food fish for the purpose of rendering the same into oil or fertilizer, and any such person, corporation, copartnership or firm taking food fish for such purpose shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars for each offense. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 325. *Polluting waters.*—Sludge, acid or refuse from oil works, sugar houses or other manufactories, except refuse from the manufacture of oil from menhaden or other fish, sewage or any substance injurious to oyster culture or fish, shall not be placed or allowed to run into waters of the state in the marine district, and upon it appearing to the satisfaction of the supervisor that oyster beds or such waters have become polluted from one or more of these causes, it shall be his duty to cause complaint to be made in a criminal action against the person or persons so offending, and such person or persons so offending shall also be liable in damages to persons injured, in addition to the penalties hereinafter provided. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 326. *Garbage not to be thrown in certain waters.*—Garbage, cinders, ashes, oils, acids, sludge or refuse of any kind shall not be thrown, dumped, or permitted to run, from any vessel into any bay or harbor, or into Long Island sound within two miles of the shore west of a line drawn from Old Field point due north to the boundary line between New York and Connecticut. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 327. *Prohibited use of nets in inlets.*—Nets shall not be set, placed or maintained in Rockaway inlet, Jones' inlet, Zack's inlet or Fire Island inlet within an inshore radius of one-half mile of the mouth of any of such inlets. The point from which such measurement is to be taken shall be the centre of the channel where such channel crosses the bar at the mouth of said inlet. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 328. *Prohibited; nets in the Harlem river and adjacent waters.*—Nets other than nets used for catching lobsters or crabs shall not be used in the Harlem river, East river or Long Island sound from Hell Gate to the northern boundary line of the city of New York or in any of the bays, creeks or confluent brooks within said limit. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 329. *Richmond county and Raritan bay.*—Fish, except shad, in Raritan bay or waters adjacent thereto in Richmond county shall not be taken except by angling. Shad shall not be taken except by drifting shad nets from March fifteenth to June fifteenth, both inclusive. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 330. *Jamaica bay and adjacent waters.*—Nets shall not be set, placed

SUP. III—9

or maintained in the arm of the sea between Rockaway point and Coney Island or any waters northerly of a line drawn from the extreme westerly point of Rockaway point on the south side to the municipal bath houses on Coney Island, including Jamaica, Flatlands, Grassey and Sheepshead bays and all other bays and inlets in or making out from said arm of the sea. The inlets from the ocean to said bays shall not be obstructed by any device so as to prevent the passage of fish at any time, provided that nets may be used from October tenth to December thirty-first in that part of said waters lying southerly of Barren island and toward the sea from a line drawn from the most southerly point of Barren island to the northeasterly point of Rockaway point and a line drawn from the most westerly point on Barren island to the most easterly point of Coney Island. Refuse and debris may be taken with nets having meshes with not less than a six-inch bar. Minnows or shrimp for bait may be taken by hand nets not more than forty feet long and four feet deep. Eels may be taken with a spear or eel weir. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 331. **Size of mesh in Coney Island creek.**—The mesh of nets used in Coney Island creek, or within one-half mile of the mouth thereof in Gravesend bay, shall not be less than four inches square. Eel and flounder hoop nets may be used from October fifteenth to March thirty-first, both inclusive, provided there be in said creek at low tide a passage unobstructed by nets not less than ten feet wide for the passage of boats and fish, and provided that all stakes used in connection with said nets shall show plainly above the water at high tide. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 332. **Rockaway bay, Jones' inlet and adjacent waters.**—Nets shall not be set, placed or maintained in Far Rockaway bay, Jones' inlet or waters adjacent thereto, west of a line drawn from the easterly end of Goose island south to Zack's inlet life saving station. This section shall not apply to nets used only for taking lobsters or crabs; or hand nets not more than forty feet long to take minnows, menhaden, killies, spearing, or shrimp for bait provided a license to take such bait shall be first obtained pursuant to the provisions of section two hundred and thirty of this article. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 333. **Recording and fees.**—All franchises, grants and leases of lands for shellfish culture, and assignments thereof, shall be recorded in the office of the supervisor, and all records thereof, theretofore or hereafter made, in such office or in any public office, and copies of such records when duly certified by the officer having the custody thereof, shall be admitted in evidence in any action or proceeding, civil or criminal, in which they are material. Fees shall be paid to the state and collected by the supervisor as follows, to wit, for the filing of each application for

L. 1912, ch. 318.

Private parks.

§§ 334, 335, 360.

a grant or lease of land under water, twenty-five cents; for recording each instrument of lease, grant or assignment, one dollar; for each copy of any record of said office furnished, ten cents a folio; for each relocation survey, seven dollars per day for the time occupied, together with the actual traveling expenses of the surveyor. Any person requiring an original relocation survey shall furnish a vessel at the place where such survey is to be made, and the necessary assistance to do the work, at his own expense. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 334. **Supervisors of Nassau and Suffolk counties.**—The board of supervisors of the counties of Nassau and Suffolk may respectively pass laws not inconsistent with the provisions of this article regulating and controlling the taking of fish, and shellfish in arms of the sea and fish bait from public lands of such counties, and prescribe what violation thereof shall be punishable as misdemeanors and impose penalties, the same to be enforced under the provisions of article three of this chapter. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 335. **Penalties.**—A person who violates any provisions of sections three hundred and thirteen to three hundred and twenty-three, both inclusive, and sections three hundred and twenty-five to three hundred and thirty-three, both inclusive, of this article is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in a county jail or penitentiary for not less than one day for every dollar of such penalty or by both such fine and imprisonment; and for each violation of sections three hundred and twenty-one and three hundred and twenty-five to an additional penalty of ten dollars for each fish or crustacea taken or possessed in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART XI.

PRIVATE PARKS.

Section 360. Laying out private parks.

361. Notices in private parks.

362. Protection of private lands not parks.

363. Notices furnished.

364. Signs not to be defaced.

365. Fish and game protected.

366. Penalties.

§ 360. **Laying out private parks.**—A private park for the propagation and protection of fish, birds or game may be established by an owner or person having the exclusive right to hunt or fish on land or land and water, by publishing once a week for not less than four weeks in a newspaper printed in the county where such land or land and water are situated, a notice substantially describing the same and stating that it will be

§§ 361-364.

Private parks.

L. 1912, ch. 318.

used as a private park to propagate and protect fish, birds or game. Part of a lake or pond may be laid out in a private park, if all riparian owners, including owners of the bed thereof, consent thereto in writing. If the state of New York be such owner such consent may be given by the commission. But waters stocked with fish by the state at any time after April seventeenth, eighteen hundred and ninety-six, shall not be laid out in any such park. If waters or lands are hereafter stocked by the state with fish or game with the consent or knowledge of the owner, the provisions of this part shall no longer apply thereto. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 361. **Notices in private parks.**—Notice or signboards not less than one foot square warning all persons against hunting or fishing or trespassing thereon for that purpose, shall be conspicuously posted and maintained on a private park as follows: If it consists entirely of land, not more than forty rods apart along the entire boundary thereof; if it consists of land and water, at least one notice for each one hundred acres thereof; if it consists of a lake or pond only, in at least four conspicuous places on or near the shore thereof; if it consists of a stream only, not more than one-half mile apart on the banks thereof. If a park be fenced, upon part or the whole of the outer boundary thereof, notices shall be placed on or near the fence not more than forty rods apart. It shall also be considered due service of notice for trespass upon any person or persons, by serving them personally in the name of the owner or owners of such private park with a written notice containing a brief description of the premises, warning all persons against hunting or fishing or trespassing thereon. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 362. **Protection of private lands not parks.**—An owner or person having the exclusive right to hunt or fish upon inclosed or cultivated lands, or to take fish in a pond or stream and desiring to protect the same, shall maintain such notices or signboards, as are described in the preceding section, upon every twenty-five acres of the premises sought to be protected upon or near the lot lines thereof, and one sign at each corner thereof, or if waters only, upon or near the shores thereof in at least two conspicuous places, or may personally serve a written notice in the name of such owner or person containing a brief description of the premises warning all persons against hunting or fishing or trespassing thereon for that purpose. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 363. **Notices furnished.**—Upon written application to the commission accompanied by one dollar for every ten notices or part thereof applied for, printed notices may be furnished by the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 364. **Signs not to be defaced.**—A person who injures, defaces or removes a notice or signboard, placed or maintained pursuant to the pro-

L. 1912, ch. 318.

Breeding, etc., fish and game.

§§ 365, 366, 370.

visions of this article, is guilty of a misdemeanor, and liable to a penalty of twenty-five dollars. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 365. **Fish and game protected.**—No person shall take or disturb fish, birds or game on any private park or private lands or trespass thereon for that purpose, after notice as prescribed in this part. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 366. **Penalties.**—A person who violates any provision of this article is guilty of a misdemeanor, and shall be subject to exemplary damages in the sum of twenty-five dollars for each offense or trespass to be recovered by the owner of the lands, or hunting and fishing rights thereon, with costs of suit, in addition to the actual damages, all of which may be recovered in the same action. The consent in writing of such owner to hunt or fish on said lands during the open season shall be a defense to a prosecution under this section. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART XII.

BREEDING, IMPORTATION AND SALE OF FISH AND GAME.

Section 370. Lake trout and other fish; transportation of; sale during close season.

371. Sale of trout raised in private hatcheries.

372. Breeding of elk, deer, pheasants and ducks.

373. Certain mammals and birds may be imported from without the United States and sold.

374. Fees.

375. Storage of fish.

376. Penalties.

§ 370. **Lake trout and other fish; transportation of; sale during close season.**—Fish that may be lawfully sold under the provisions of this article, if lawfully taken in another state or country, may be transported into this state and possessed during the open season prescribed by this article. Provided, however, that no person shall transport into this state, or possess, any fish caught in that portion of Lake Champlain or its tributaries known as Missisquoi bay, lying and being in the province of Quebec, or the Richelieu river, which is the outlet of said lake, at any time. During the close season therefor any person may buy, possess and sell lake trout, whitefish, pickerel, pike, pike perch, shortnosed sturgeon and striped bass taken without the state, provided, however, such person shall keep a book of record in which he shall enter the name, residence and post-office address of every person from whom he shall buy, sell to or ship such fish and will at all times permit the commission, or any member or officer thereof, a full examination of his books and papers relating to the purchase and sale of fish, and will, when required by the commission, furnish

§§ 371, 372.

Breeding, etc., fish and game.

L. 1912, ch. 318.

the original invoice or invoices, freight or express receipts used in the transportation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 371. **Sale of trout raised in private hatcheries.**—Any person desiring to engage in the business of propagating and selling trout raised in a private hatchery may make application in writing to the commission for a permit so to do. The commission, when it appears that such application is made in good faith, shall issue to such applicant a hatchery permit to propagate, raise and sell trout during the entire calendar year, provided, however, that before any trout shall be transported, sold or offered for sale, the same shall be duly tagged under regulations prescribed by the commission. Upon obtaining a like permit, trout raised in a private hatchery without the state, may be possessed and sold within this state, provided the same shall be tagged as prescribed under rules and regulations of the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 372. **Breeding of elk, deer, pheasants and ducks; license; manner of killing; tagging; transportation; sale; reports; fencing; revocation of license.**

1. *License.* Any person desiring to engage in the business of raising and selling domesticated American elk, white-tailed deer, European red deer and fallow deer, roebuck, pheasants, mallard ducks and black ducks, or any of them, in a wholly enclosed preserve, or entire island, of which he is the owner or lessee, may make application in writing to the commission for a license so to do. The commission, when it shall appear that such application is made in good faith, shall, upon the payment of a fee of five dollars, issue to such applicant a breeder's license permitting such applicant to breed and raise domesticated American elk, white-tailed deer, European red deer and fallow deer, roebuck, pheasants, mallard ducks and black ducks, or any of them, on such preserve or entire island, and to sell the same alive at any time for breeding or stocking purposes, and to kill and transport the same and sell the carcasses thereof for food as hereinafter provided. Such license shall expire on the last day of December in each year at midnight.

2. *Manner of killing.* Any person to whom such a license shall have been issued may kill such elk, deer, pheasants or ducks in the manner and at the times herein set forth, as follows: Elk or deer may be killed by shooting, or otherwise, between the first day of October and the first day of March, both inclusive. Pheasants may be killed by shooting, or otherwise, between the first day of October and the thirty-first day of January, both inclusive. Mallard ducks and black ducks may be killed, otherwise than by shooting, from the first day of October to the tenth day of January, both inclusive. Any person may possess or sell such elk, deer, pheasants or ducks for food as hereinafter set forth. A breeder of pheasants under a license, as herein provided, may, during the month of Feb-

ruary, kill by shooting his surplus cock pheasants, provided he shall first obtain a license from the commission so to do.

3. *Tagging.* No elk, deer, pheasants or ducks, killed as aforesaid and intended for sale, shall be shipped, transported, sold or offered for sale, unless each quarter and each loin of each carcass of such elk or deer, and each pheasant or duck shall have been tagged under the supervision of the commission with an indestructible tag or seal, which shall be supplied by the commission. The quarters and loins of the carcass of such elk or deer, and the carcasses of such pheasants or ducks, when tagged as aforesaid, may be possessed, sold or offered for sale between October first and March first, both inclusive. Every game protector or person designated by whom such elk, deer, pheasants or ducks shall have been tagged, shall, within five days thereafter, make and file with the commission a written report thereof, which shall contain a statement of the name of the person by whom such elk, deer, pheasants or ducks were bred or raised and killed; the number of such elk, deer, pheasants or ducks so killed, and the name of the person or persons to whom such elk, deer, pheasants or ducks were sold, or to whom they were transported.

4. *Transportation.* Common carriers may receive and transport during the open season therefor carcasses, or parts thereof, of elk, deer, pheasants or ducks tagged as aforesaid, but to every package containing such carcasses, or parts thereof, shall be affixed a tag or label, upon which shall be plainly printed or written the name of the person to whom such license was issued and by whom such elk, deer, pheasants or ducks were killed, the name or names of the person or persons to whom such elk, deer, pheasants or ducks are to be transported; the name of the game protector or other person by whom such elk, deer, pheasants or ducks were tagged; the number of carcasses or portions thereof contained therein, and that the elk, deer, pheasants or ducks were killed and tagged in accordance with the provisions of this section.

Penalty for delivering birds or fish to common carrier.—Section 103 of the former Forest, Fish and Game Law provided, among other things, that "No person shall at any time transport any birds or fish for which a close season is provided in any package unless the kind and number of such birds or fish shall be plainly marked on the outside of said package, together with the names of consignor and consignee, the initial point of billing and the destination." And it declared that "The reception by any person or common carrier within this state of any such birds or fish for shipment in an unmarked package shall constitute a violation of this section by such person or common carrier." Assuming that the provisions of the section applied to such shipments of such birds or fish from one place to another within the state, it imposed no penalty upon a person who delivered such birds or fish to an expressman or to a railroad company for transportation. The only penalty prescribed by the above-quoted part of the section is against a person or common carrier who receives such birds or fish for shipment. *People v. Suydam* (1912), 204 N. Y. 419.

Application of Interstate Commerce Act as to disclosing of information by common

§§ 373.

Breeding, etc., fish and game.

L. 1912, ch. 318.

carrier.—The provisions of the Interstate Commerce Act, prohibiting the disclosing of information by any common carrier, or any officer, agent or employee of such carrier, without the consent of the shipper or consignee, concerning the nature, destination, routing, or other information therein mentioned, do not apply in case of the illegal shipment of game, and such officers, agents or servants, may be subpoenaed and may be compelled to testify in regard to such illegal shipment. Rept. of Atty. Genl. (1911), Vol. 2, p. 648.

5. *Sale.* No person shall sell or offer for sale any venison or birds killed and tagged as aforesaid without first obtaining a license so to do from the commission, upon such terms and conditions as the commission may prescribe, and any such license may be revoked at the pleasure of the commission. The said tags or seals shall remain affixed as aforesaid until the quarters or loins of such elk or deer, or the carcasses of such pheasants or ducks shall have been wholly consumed, and the sale of a quarter, loin, or any larger portion of any such elk or deer, or the carcass of any such pheasant or duck, which shall not at the time have affixed thereto the tag or seal aforesaid, shall constitute a violation of this section, provided, however, that the keeper of a hotel, a restaurant, a boarding house or a retail dealer in meat or a club, may sell portions of a quarter or loin of any such elk or deer, or of the carcass of any such pheasants or ducks so tagged or sealed as aforesaid, to a patron or customer for actual consumption, and no license shall be required of such person or club.

6. *Reports.* On or before the fifteenth day of April of each year every person, to whom a license shall have been issued as aforesaid, shall make a report to the commission covering the period from the first day of October to the first day of March preceding, which said report shall state the total number of elk, deer, pheasants, mallard and black ducks killed, sold or transported, as permitted by the provisions of this section, during said period.

Such reports shall set forth the name of the person to whom such elk, deer, pheasants or ducks were sold or transported; the name of the game protector or person designated in whose presence such elk, deer, pheasants or ducks were tagged, and such reports shall be verified by the affidavit of the person to whom such license was issued, or if the license was issued to a corporation, then by an officer thereof.

7. *Deer preserves to be fenced.* A preserve used for the breeding of elk or deer, pursuant to this section, shall be surrounded by a fence of wire or other material of a pattern to be approved by the commission and of a height not less than seven feet.

8. *Revocation of license.* If any person to whom any such license shall have been issued shall be convicted of a violation of the fish and game law, the commission may revoke the license of such person, and thereafter no similar license shall be issued to such person. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 373. Certain mammals and birds may be imported from without the

L. 1912, ch. 318.

Breeding, etc., fish and game.

§§ 374, 375.

United States and sold.—The unplucked carcasses of pheasants of all species, Scotch grouse, European black-game, European black plover, European red-legged partridge, Egyptian quail, and the carcasses of European red deer, fallow deer and roebuck may be imported into this state from without the United States and sold therein at any time, provided, nevertheless, that immediately upon their importation and before they shall have been sold by the importer, there shall be affixed to each bird and to each quarter and each loin of each deer a tag or seal in the manner provided by section three hundred and seventy-two. The said tags or seals shall remain, as aforesaid, until the quarters and loin of such deer, and each bird to which it shall be affixed shall have been consumed, and the sale of any quarter, loin or larger portion of such deer, or of any portion of such bird which shall not at the time have affixed to it the tag or seal aforesaid shall constitute a violation of this section. Provided, nevertheless, that the keeper of a hotel, a restaurant, a boarding house or a retail dealer in meat or a club may sell portions of a quarter or loin of any such deer so tagged, or portions of any birds so tagged to a guest, customer or member for consumption. No dealer other than the keeper of a hotel, a restaurant, a boarding house or a retail dealer in meat or a club shall sell or offer for sale any such game imported and tagged as aforesaid without first obtaining a license so to do from the commission upon such terms and conditions as the commission may prescribe. Such license shall expire on the last day of December in each year at midnight unless sooner revoked by the commission. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

Construction.—The provisions of the Game Law of the state, whereby certain game birds of foreign countries are excluded and certain others admitted, are not based upon geographical lines but are governed by ornithological classifications. The scheme of the statute is to permit the importation of such game birds as do not resemble those native to the state of New York and to prevent the importation of such as do resemble those native to the state, the purpose being to protect the native birds and not to grant or deny commercial favors to other nations. Rept. of Atty. Genl. (1911), Vol. 2, p. 664.

§ 374. **Fees.**—The commission shall be entitled to receive and collect for each tag or seal affixed to the carcass of any animal or bird, as provided by sections three hundred and seventy-two and three hundred and seventy-three, the sum of five cents and the sum of three cents for each tag or seal affixed to each trout as provided by section three hundred and seventy-one hereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 375. **Storage of fish.**—Any dealer in fish, duly licensed as herein provided, may hold during the close season, in a store house to be designated by the commission, such part of his stock of fish as he has on hand undisposed of at the beginning of the close season. Such dealer shall give a bond to the people of the state conditioned that he will not, during the close season ensuing, sell, use, give away, or otherwise dispose of any

§§ 376, 380.

Definitions and construction.

L. 1912, ch. 318.

fish which he is permitted to possess during the close season; that he will not in any way, during the time when such bond is in force, violate any provision of this article; the bond may also contain such other provisions as to the inspection of the fish possessed, as the commission shall require, and shall be subject to the approval of the commission as to amount and form thereof, and the sufficiency of the sureties. But no presumption that any fish is lawfully possessed under the provisions of this section shall arise until it affirmatively appears that the provisions thereof have been complied with. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 376. **Penalties.**—A person who violates or fails to perform any duty imposed by any of the provisions of this part is, except as provided in section two hundred and eleven, guilty of a misdemeanor, and is liable to a penalty of sixty dollars and an additional penalty of twenty-five dollars for each fish, bird, or quadruped or part of fish, bird or quadruped bought, sold, offered for sale, taken, possessed, transported or had in possession for transportation in violation thereof. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

PART XIII.

DEFINITIONS AND CONSTRUCTION.

Section 380. **Definitions.**

381. **Application of article.**

382. **Construction.**

383. **Repeal.**

384. **Time of taking effect.**

§ 380. **Definitions.**—The following words and phrases used in this article are defined as follows:

1. "Commission" is synonymous with conservation commission.
2. Gender and number shall be disregarded in construing this article whenever it is necessary to carry out the spirit thereof.
3. "Person" includes a copartnership, joint-stock company or corporation.
4. "Open season" is the time during which fish, fowl, birds and quadrupeds may be taken. If in accordance with the provisions of this article the open season commences or ends on Sunday, it shall be deemed to commence or end as the case may be on the Saturday immediately preceding such Sunday.
5. "Close season" is the time during which fish, fowl, birds and quadrupeds cannot be taken.
6. "Fish." Fish includes "fish protected by law," "fish protected by this article," and "food-fish." Whenever the words "fish protected by law" or "fish protected by this article" are used, reference is had only to fish for which a closed season or size limit is provided. Whenever the words "food-fish" are used, reference is had to all species of edible fish.

7. "Game" includes wild game, domestic game and imported game.
8. "Wild game" includes all game birds as defined and mentioned in section two hundred ten, and all quadrupeds for which a close season is provided, excepting quadrupeds mentioned in sections one hundred ninety-eight, one hundred ninety-nine and two hundred.
9. "Domestic game" includes quadrupeds and birds mentioned in section three hundred seventy-two.
10. "Imported game" includes quadrupeds and birds mentioned in section three hundred seventy-three.
11. "Wild deer" includes all deer not lawfully held in private ownership in a preserve wholly enclosed by a fence, as provided by section three hundred seventy-two hereof.
12. "Grouse" includes ruffed grouse, partridge and every member of the grouse family.
13. "Trout" includes speckled trout, brown trout, rainbow trout, red-throat trout and brook trout.
14. "Lake trout" for the purposes of this article includes land-locked salmon and ouananische.
15. "Black bass" includes Oswego bass.
16. "Pickerel" and "pike" include the great northern pike, commonly called pickerel, pond pickerel, chain pickerel, grass pickerel and banded pickerel.
17. "Pikeperch" includes wall-eyed pike, commonly called pike and yellow pike.
18. "Shell fish" includes oysters, scallops and all kinds of clams.
19. "Pheasants" includes Hungarian dark-necked pheasant, ring-necked, commonly called English, Mongolian or Chinese pheasant.
20. "Angling" means taking fish by hook and line in hand or rod in hand; or if from a boat not exceeding two lines with or without rod to one person.
21. "Hooking" is defined to mean taking or attempting to take fish not attracted by bait or artificial lure, by snatching with hooks, whether baited or unbaited, gangs or similar devices.
22. "Plumage" includes any part of the feathers, head, wings or tail of any bird, and wherever the word occurs in this article reference is had to plumage of birds coming from without the state as well as to that obtained within the state, but it shall not be construed to apply to the feathers of birds of paradise, ostriches, domestic fowl or domestic pigeons.
23. Where lands are referred to as "enclosed" or "wholly enclosed" the boundary may be indicated by wire, ditch, hedge, fence, road, highway, water or by any visible or distinctive manner which indicates a separation from the surrounding contiguous territory, except as otherwise provided.
24. "Inhabited" means a permanent occupancy by a species as contrasted with a temporary presence of an occasional individual.

§§ 381-384.

Definitions; repeal.

L. 1912, ch. 318.

25. "Nets" include seines, gill nets, pound nets, trap nets, scap nets, fyke nets, dip nets, scoop nets and stake nets.

26. "Taking" includes pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish and game, and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing or using any net or other device commonly used to take fish and game, whether they result in taking or not; and includes every attempt to take and every act of assistance to any other person in taking or attempting to take fish or game. A person who counsels, aids or assists in a violation of any of the provisions of this article, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, birds or game shall be deemed to have incurred the penalties provided in this article against the person guilty of such violation. Whenever taking is allowed by law, reference is had to taking by lawful means and in lawful manner. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 381. **Application of article.**—Whenever in this article the possession, purchase or sale of fish or game or the flesh of any animal, bird or fish is prohibited, reference is had equally to such fish, game or flesh coming from without the state as to that taken within the state. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 382. **Construction.**—This article is intended to be a restatement of existing law with such changes as clearly appear. The term of office of all the present employees of this commission in the department of fish and game shall not be affected, except as herein specifically provided. Nothing in this article shall be construed as amending or repealing any provisions of the criminal or penal law. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 383. **Repeal.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

§ 384. **Time of taking effect.**—This article shall take effect immediately. (*Added by L. 1912, ch. 318, in effect Apr. 15, 1912.*)

SCHEDULE OF LAWS REPEALED.

| Laws of | Chapter | Sections |
|-----------|---------|---|
| 1909..... | 24..... | 1-8 inclusive, 11-18 inclusive, 28-33 inclusive, 76-112 inclusive, 114-135 inclusive, 141-166 inclusive, 165a, 174a, 167-186 inclusive, 189-194 inclusive, 205, 206, 209, 225, 240-244 inclusive. |
| 1909..... | 474 | All that part of section one adding or amend- |

CONSERVATION LAW.

141

| L. 1912, ch. 318. | Repeal. | § 384. |
|-------------------|---------|--------|
|-------------------|---------|--------|

ing the following sections: 2, 4, 11, 13, 14,
76, 77, 78, 82, 84, 88, 91, 92, 98, 106, 109,
117, 124, 126, 134, 146, 150, 152, 153, 240.

| | | |
|-----------|----------|--------------------|
| 1909..... | 533..... | All. |
| 1909..... | 240..... | 28, 29, 30. |
| 1910..... | 256..... | 1, 2, |
| 1910..... | 655..... | All. |
| 1910..... | 656..... | All. |
| 1910..... | 657..... | 1, 2, 4. |
| 1910..... | 663..... | All. |
| 1910..... | 664..... | All. |
| 1910..... | 675..... | All. |
| 1911..... | 170..... | All. |
| 1911..... | 171..... | All. |
| 1911..... | 188..... | All. |
| 1911..... | 238..... | All. |
| 1911..... | 299..... | All. |
| 1911..... | 312..... | All. |
| 1911..... | 377..... | All. |
| 1911..... | 378..... | All. |
| 1911..... | 423..... | All. |
| 1911..... | 438..... | All. |
| 1911..... | 508..... | All. |
| 1911..... | 530..... | All. |
| 1911..... | 580..... | All. |
| 1911..... | 582..... | All. |
| 1911..... | 583..... | All. |
| 1911..... | 589..... | All. |
| 1911..... | 590..... | All. |
| 1911..... | 591..... | All. |
| 1911..... | 592..... | All. |
| 1911..... | 627..... | All. |
| 1911..... | 635..... | All. |
| 1911..... | 636..... | All. |
| 1911..... | 647..... | 150-178 inclusive. |
| 1911..... | 854..... | All. |

CONTRACTS.

Separate specifications for municipal work; General Municipal L., § 88: For state; State Finance L., § 50.

CO-OPERATIVE SAVINGS ASSOCIATIONS.

Fines; Banking L., § 211.

CORONERS.

Election in certain counties; County L., § 180.

COUNTIES.

L. 1912, ch. 548.—An act to erect the county of Bronx from the territory now comprised within the limits of the borough of Bronx, in the city of New York, as constituted by chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven and all acts amendatory thereof and supplemental thereto. (*In effect when adopted by the people.*)

Section 1. All that territory now comprised within the borough of Bronx in the city of New York as constituted by chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto is hereby set off from the county of New York and is erected into the county of Bronx as a separate and distinct county of the state of New York from and after the date of taking effect of this act, except, however, that until constitutional and legal change, the said territory hereby erected as the county of Bronx shall continue to be for the purpose of electing members of assembly, a part of the thirtieth and all of the thirty-second, thirty-third, thirty-fourth and thirty-fifth assembly districts of the county of New York, as now constituted by law, and shall continue to be for the purpose of electing senators, a part of the twenty-first and all of the twenty-second senate district in the county of New York as now constituted by law. For the purpose of electing judges of the supreme court, the territory, in the county of Bronx, now in the first judicial district shall continue to be in the first judicial district. For the purpose of electing a representative in congress, the said county of Bronx shall continue a part of the twenty-first, twenty-second, twenty-third and twenty-fourth congressional districts of the state of New York as now constituted by law. Freeholders, citizens and inhabitants of the said county of Bronx for all purposes except as aforesaid shall have and enjoy all and every the rights, powers and privileges as freeholders, citizens and inhabitants of any of the counties of this state are by law entitled to have and enjoy, but they shall be subject to be assessed and taxed for city, county and state purposes in the manner provided by the laws of the state of New York, and by the provisions of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven and of all acts amendatory thereof and supplemental thereto.

§ 2. Until the judicial, congressional, senatorial and assembly districts as now constituted by law shall be otherwise established by law, the electors of the territory erected by this act into the county of Bronx shall continue to vote in the first judicial district, the twenty-first, twenty-second, twenty-third and twenty-fourth congressional districts, the twenty-first and

L. 1912, ch. 548.

Bronx county erected.

§ 3.

twenty-second senatorial districts of the state of New York and the thirtieth, thirty-second, thirty-third, thirty-fourth and thirty-fifth assembly districts of the county of New York, and for all other purposes and offices such electors shall vote as electors of the city of New York and the county of Bronx. The statements of any election held in and for such territory for justices of the supreme court of the first judicial district and representatives in congress, senators and members of assembly and for all municipal officers elected in the city of New York under the provisions of said chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto, shall be made by the board of county canvassers of the county of Bronx in the same manner and with like effect as statements of election are made by boards of county canvassers of other counties in the city of New York.

§ 3. There shall be a county court and a surrogate's court in and for the county of Bronx with all the jurisdiction and powers respectively vested in said courts by the constitution and the general laws relating to the county courts and surrogates' courts respectively in the several counties of this state now included in the city of New York, except as hereinafter provided. There shall be elected in the said county of Bronx at the general election of nineteen hundred and thirteen a county judge, a surrogate, a district attorney, a sheriff, a county clerk, and a register of deeds. The official term of said officers shall be as follows: The county judge, six years; the surrogate, six years; the district attorney, four years; the sheriff, four years; the county clerk, four years; the register of deeds, four years. Such officers shall have all the powers and perform all the duties as required by the constitution and the laws of this state prescribing the duties and powers of such officers. The surrogate shall make the following appointments, and the annual salary of each appointee shall be as hereinafter specified: A chief clerk, at two thousand five hundred dollars; a cashier, at two thousand five hundred dollars; a probate clerk, at three thousand dollars; an administration clerk, at three thousand dollars. The district attorney shall make the following appointments, and the annual salary of each appointee shall be as hereinafter specified: Five assistant district attorneys, at five thousand dollars each; three deputy assistant district attorneys, at three thousand dollars each; a chief clerk, at two thousand five hundred dollars; a secretary, at two thousand dollars. The sheriff shall make the following appointments, and the annual salary of each appointee shall be as hereinafter specified: An under sheriff, at five thousand dollars; ten deputy sheriffs, at two thousand five hundred dollars each; five assistant deputy sheriffs, at one thousand five hundred dollars each; a cashier, at two thousand five hundred dollars; a secretary, at two thousand dollars; a chief clerk, at one thousand five hundred dollars. The register shall make the following appointments, and the annual salary of each employee shall be as hereinafter specified: A

§ 4.

Bronx county erected.

L. 1912, ch. 548.

deputy register, at four thousand dollars; an assistant deputy register, at three thousand dollars; a chief clerk, at two thousand five hundred dollars; a cashier, at two thousand five hundred dollars; an examiner, at two thousand dollars; a secretary, at two thousand dollars. The county clerk shall make the following appointments, and the annual salary of each appointee shall be as hereinafter specified: A deputy county clerk, at four thousand dollars; an assistant deputy county clerk, at three thousand dollars; a chief clerk, at two thousand five hundred dollars; a cashier, at two thousand five hundred dollars; a notarial clerk, at two thousand five hundred dollars; an equity clerk, at three thousand dollars; a secretary, at two thousand dollars. The surrogate of the county of Bronx shall also appoint a public administrator of the county of Bronx, and such public administrator shall have all the authority and powers within said county of Bronx as are now conferred by law upon the public administrator of the county of New York. The salary of the public administrator of the county of Bronx shall be four thousand dollars per annum and he shall, in addition, receive and retain to himself the same allowance for his services and expenses incurred as are allowed to a county treasurer under section twenty-six hundred and sixty-seven of the code of civil procedure.

§ 4. The salary of the county judge shall be ten thousand dollars per annum; the salary of the surrogate shall be ten thousand dollars per annum; the salary of the district attorney shall be ten thousand dollars per annum; the salary of the sheriff shall be ten thousand dollars per annum; the salary of the county clerk shall be ten thousand dollars per annum; the salary of the register of deeds shall be ten thousand dollars per annum, and the salary of the commissioner of jurors shall be five thousand dollars per annum, and except as herein otherwise provided the positions, terms, grades, salaries, and compensation of all persons who may be appointed under the provision of law by any of the officers above mentioned or who may be required to carry on the public business as contemplated by this act shall be fixed by the board of estimate and apportionment of the city of New York, and such salaries or other compensation and all other county charges and expenses of the county of Bronx shall be audited and paid by the department of finance in the manner provided for the audit and payment of the salaries of all county officers and the charges and expenses of the counties now included within the city of New York by chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto. All fees, statutory or otherwise, which under any provision of law may be paid to any of the officials above provided for in this act or for rendering any services whatever of a public nature within the scope of the duties and powers of the said officials shall be paid into the treasury of the city of New York, except as herein otherwise provided. Any moneys payable into court under the provisions of title three, chapter eight of the code of

civil procedure or otherwise shall be paid to the chamberlain of the city of New York.

§ 5. All the county officers for the county of Bronx hereby erected and which are authorized by this act shall be elected at the general election of this state in the year nineteen hundred and thirteen, and the officers elected thereat for the said county of Bronx shall hold their offices respectively for the terms now provided by this act for the office to which they are elected, beginning on the first day of January next after said election. In the meantime, in order that no existing rights may be prejudiced, and to prevent an interregnum, the county officers of New York county shall continue to have their present jurisdiction, powers and duties in the territory within the county of Bronx until the first day of January, nineteen hundred and fourteen, except as herein otherwise provided.

§ 6. The county court and the surrogate's court and also the sittings and terms of the supreme court held in and for the said county of Bronx shall be held at the courthouse hereafter to be erected in the said county and until then the said courts shall be held at such place and places in said county as may be designated and fixed by the commissioners of the sinking fund of the city of New York. The designation of the place for the holding of such courts shall be in writing and shall be entered in the minutes of the proceedings of said commissioners of the sinking fund at least thirty days before the time of the holding of any of said courts and the clerk of the said commissioners shall immediately cause a notice of such designation of said place or places of holding such courts to be published in such newspapers printed and published within the territorial limits of the said county of Bronx in such a manner and for such a term as such commissioners shall direct. No provision of this act shall be construed as affecting within said county of Bronx the jurisdiction of the city court of the city of New York, or the municipal courts of the city of New York. The commissioners of the sinking fund of the city of New York are hereby authorized, empowered and shall provide necessary and proper temporary offices for each of the officials named in this section for the transaction of the public business until such time as provision shall be made for permanent offices for such officials under provisions of law. Within thirty days after the time of taking effect of this act, the justices of the appellate division in the first department shall fix the times and places for holding special and trial terms of the supreme court in the county of Bronx, as provided by the judiciary law.

§ 7. The county court within the county of Bronx on and after the first day of January, nineteen hundred and fourteen, shall have the same jurisdiction over civil and criminal actions and special proceedings as is now exercised under the provisions of law by the county court of the county of Kings. The surrogate's court shall have jurisdiction in said county as is now possessed by the surrogate's court of the county of New York.

§ 8. There shall be a commission of jurors for the county of Bronx

SUP. III—10

who shall be appointed as provided by chapter four hundred and forty-one of the laws of eighteen hundred and ninety-nine, except that within thirty days after the time of taking effect of this act, the governor shall appoint a commissioner of jurors for the county of Bronx, who shall hold such office until the first day of January, nineteen hundred and fourteen, and until the appointment of his successor, and such commissioner of jurors within said county of Bronx shall exercise all the powers and possess all the authority as to the returning and summoning of grand and trial jurors for the said county of Bronx as now provided by said chapter four hundred and forty-one of the laws of eighteen hundred and ninety-nine, and all acts amendatory thereof and supplemental thereto. The president and commissioners of the department of taxes and assessments in the city of New York, must render to the commissioner of jurors of the county of Bronx such assistance as they are now required to render to the commissioners of jurors of each of the counties of Richmond and Queens.

§ 9. From and after the time of the taking effect of this act, the supreme court and on and after the first day of January, nineteen hundred and fourteen, the county courts shall have jurisdiction over all crimes and misdemeanors committed within the territory of the county of Bronx, except as herein otherwise provided; within the county of Bronx the courts of special sessions and magistrates' courts as now constituted by law shall have jurisdiction of such offenses as may be tried and determined by such court of special sessions and by such magistrates' courts as now constituted under and by virtue of chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto, the same as if this act had not been passed. Provided, however, that the several courts within the county of New York and within the first judicial district of the supreme court of the state of New York shall have and retain jurisdiction of all actions, proceedings and matters that shall have been rightfully commenced in said courts prior to the said first day of January, nineteen hundred and fourteen, and the several courts of the county of Bronx having criminal jurisdiction on and after the first day of January, nineteen hundred and fourteen, shall have the same jurisdiction of crimes, offenses and misdemeanors that shall have been committed in the said territory that the courts of the county of New York having criminal jurisdiction now have in the county of New York, provided proceedings shall not have been already rightfully commenced in any of the courts of the county of New York for the prosecution of said crimes, offenses and misdemeanors, in which case, the said courts within the county of New York shall have and retain jurisdiction of the same for the full, complete and final disposition thereof, and until the said first day of January, nineteen hundred and fourteen, the said courts of the county of New York, and in the said first judicial district, shall retain and exercise in all civil and criminal proceedings the same jurisdiction they now have.

§ 10. The prisoners of the said county of Bronx and persons lawfully detained on any process therein shall be confined in the jail or prison or other place of detention of the county of New York, in which such prisoners and persons of the county of New York arrested, held or detained are now confined or detained as provided by law, until the jail or other place of detention to be hereafter erected by the county of Bronx shall be furnished in such manner as in the opinion of the sheriff of the said county of Bronx will confine the prisoners or other persons lawfully detained in the same, when it shall be lawful for the said sheriff to remove and commit them to the jail or other place of detention of the said county of Bronx. The reasonable charges and expenses of the county of New York for the custody, maintenance and detention of all said prisoners or other persons detained as aforesaid as may be thus committed to the keeper of said jail or other place of detention of the said county of New York, shall be ascertained and audited by the comptroller of the city of New York and the same shall be levied and collected against the county of Bronx in the same manner that other county charges are levied and collected against said county, and the amount thereof shall be paid into the treasury of the city of New York and credited by the comptroller to the county of Bronx.

§ 11. All acts and parts of acts specially applicable to the county of New York or that portion of the borough of Bronx formerly part of the county of Westchester annexed to the city of New York by chapter nine hundred and thirty-four of the laws of eighteen hundred and ninety-five and now in force in the borough of Bronx and not inconsistent with this act shall continue in full force and effect in the county of Bronx, as though the said county had been in existence at the time of the passage of said acts, as though the name of the said county of Bronx had appeared in said acts and parts of acts wherever the name of the county of New York or the county of Westchester appears in said acts or parts of acts.

§ 12. The county of Bronx erected by this act shall possess all the rights and be subject to all the obligations of the counties now included within the city of New York, except as in this act specifically provided.

§ 13. The amount required to be raised by taxation for necessary expenses of the salaries of the county officers and all other county expenses and charges of the county of Bronx shall be ascertained and stated as required by chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto, and the same shall be levied and collected upon the taxable property within said county in the manner provided by said chapter three hundred and seventy-eight of the laws of eighteen hundred and ninety-seven, and all acts amendatory thereof and supplemental thereto.

§ 14. The members of the board of aldermen of the city of New York elected as such within and for the borough of Bronx as now constituted by law shall constitute the board of county canvassers of the county of Bronx, and shall perform the duties of such board of county canvassers

§§ 15-17.

Bronx county erected.

L. 1912, ch. 548.

under the provisions of chapter ninety-five of the laws of nineteen hundred and one, entitled "An act to amend the election law, being chapter nine hundred and nine of the laws of eighteen hundred and ninety-six, constituting chapter six of the general laws as amended, together with such other duties as may be prescribed by the election law," and all acts amendatory thereof.

§ 15. The county judge of the county of Bronx shall forthwith adopt and procure a seal for said county with suitable device and inscription and such seal shall thereupon be and become the official seal of said county and of the supreme court and of the county court of the county of Bronx. The surrogate of the county of Bronx shall also forthwith adopt and procure a seal for the surrogate's court of said county which shall thereupon be and become the official seal of the said surrogate's court of said county. And each other official mentioned in this act, who by existing laws is required to have a seal, shall adopt and procure an official seal of his said office.

§ 16. At the general election in November, nineteen hundred and twelve, there shall be submitted to the voters of the borough of the Bronx, the question: "Shall the territory within the borough of the Bronx be erected into the county of Bronx?" If it shall appear that a majority of the votes cast on said question at said general election were against the erection of the county of Bronx, then this act shall be inoperative and void.

§ 17. This act shall take effect immediately.

COUNTY LAW.

(L. 1909, ch. 16.)

§ 10. **Meeting and organization of boards of supervisors.**—The supervisors of the cities and towns in each county, when lawfully convened, shall be the board of supervisors of the county. They shall meet annually, at such time and place as they may fix and may hold special meetings at the call of the clerk, on the written request of a majority of the board, and whenever required by law. A majority of the board shall constitute a quorum. They may adjourn from time to time, and their meetings shall be public. At the annual meeting they shall choose one of their number chairman for the ensuing year. In the event of a vacancy occurring in the office of chairman by reason of death or expiration of term of a supervisor, they may at a special meeting of the board called for such purpose, choose one of their number chairman to serve until the next annual meeting. In a county in which the biennial town meetings are held at a time other than the general election they may choose one of their number chairman at a special meeting of the board called for such purpose. In the absence of the chairman at any meeting they shall choose a temporary chairman to serve during such absence. They shall appoint a clerk to serve during their pleasure, and until his successor is appointed; and shall fix his compensation. They may compel the attendance of absent members at their meetings, make rules for the conduct of their proceedings, and impose and enforce penalties for the violation thereof, not exceeding fifty dollars for each offense. (*Amended by L. 1910, ch. 279, L. 1911, ch. 250 and L. 1912, ch. 193, in effect Apr. 4, 1912.*)

A committee of a board of supervisors has no authority to act after the expiration of the term of office of all of its members. Each board should appoint its committees for the transaction of its own business. Rept. of Atty. Genl., Feb. 14, 1912.

Compensation of chairman.—One who continues to act as chairman of the board of supervisors after his successor in the office of supervisor has qualified and entered upon the discharge of his duties is not entitled to the *per diem* compensation provided to supervisors by statute for attendance upon sessions of the board or for committee work. Rept. of Atty. Genl. (1911), Vol. 2, p. 693.

§ 11. **Penalty for neglect.**

Application for removal of supervisor, see Matter of Hoag (1911), 145 App. Div. 889, 129 N. Y. Supp. 775.

§ 12. **General powers of board of supervisors.**

Subdivision 27, as added by L. 1911, ch. 663, renumbered 28 by L. 1912, ch. 148, in effect Apr. 4, 1912.

Subdivision 28 added by L. 1912, ch. 35, in effect Mch. 8, 1912, as follows:

28. The board of supervisors of any county may from time to time appropriate and pay out for the general improvement of agricultural conditions in said county such sums as it may deem proper, and may raise

money for such purpose by a tax on real and personal property in the county. The moneys so raised may be used in the employment of a person or persons to give free agricultural advice in said county and for any other purpose which the board of supervisors shall deem proper and which, in its judgment, will encourage and promote the general improvement of agricultural conditions therein.

Subdivision 28 also added by L. 1912, ch. 194, in effect Apr. 4, 1912, as follows:

28. The board of supervisors of any county in which there are moneys in the county treasury consisting of revenues received under the provisions of chapter six hundred and forty of the laws of nineteen hundred, repealed by chapter three hundred and thirty of the laws of nineteen hundred and eight, may provide by resolution that such moneys shall be expended for the repair and improvement of side-paths, in the various towns of the county, under the direction of the county superintendent of highways, so far as the same may be sufficient therefor, upon side-paths leading from each city or town, in an amount to be specified in the resolution, equal to the portion derived from the revenues collected under such chapter therein. The moneys to be thus applied shall be paid to the county superintendent of highways by the county treasurer in the same manner as other county funds which are ordered paid by the board of supervisors; but all orders or warrants therefor shall refer to such fund as the side-path fund.

Subdivision 29, added by L. 1912, ch. 148, in effect Apr. 4, 1912, as follows:

29. Where by statute a county is required to cause to be raised and paid moneys for the support and maintenance of any person or persons in any state charitable institution which otherwise would be a charge against and payable by the towns and cities of such county, or where a county officer, or board, is required to incur expenses for supplies or services, which are required to be apportioned to the towns and cities of such county, the board of supervisors of such county may audit and pay claims therefor and cause the amounts thereof to be raised by tax levy and collected in the same manner and at the same time as state and county taxes are levied, assessed and collected in said towns and cities.

Subdivisions 29 and 30, added by L. 1912, ch. 235, in effect Apr. 9, 1912, as follows:

29. The board of supervisors shall have power to, and may, provide a fund for the payment in advance of audit of properly itemized and verified bills for the expenses of the district attorney lawfully and necessarily incurred in the prosecution of criminal actions or proceedings arising in his county, and, by resolution, authorize the county treasurer to apply said fund in payment of such bills on the approval of the district attorney endorsed thereon; said bills so paid to be transmitted to the clerk of the board of supervisors and audited by it at its next regular session held subsequent to their payment. The district attorney and any claimant

receiving payment as aforesaid shall be jointly and severally liable for any item or items contained in a bill so paid in advance of audit which shall be disallowed and rejected by the board of supervisors upon final audit, to be recovered in an action brought by the board of supervisors in the name of the county.

30. The board of supervisors are authorized to contract for telephone service and for the lighting, heating and maintenance of county buildings, and to provide the method and time of payment for the same, or it may provide a fund for payment in advance of audit of such bills, and by resolution authorize the county treasurer to apply such fund to the payment of duly itemized and verified bills for such purposes, on the approval endorsed thereon of its proper committee of the proper county officer having charge thereof; such bills so paid to be transmitted to the clerk of the board of supervisors for final audit as provided in the next preceding subdivision of this section. The members of any committee, or any officer, approving said bills as aforesaid, and any claimant receiving payment, shall be jointly and severally liable for the amount of any bill or item or items contained in a bill so paid in advance of audit, which shall be rejected and disallowed by the board of supervisors upon final audit, to be recovered in an action brought by the board of supervisors in the name of the county.

The audit of a board of supervisors, when it has jurisdiction, is as conclusive and binding upon the parties as the judgment of a court, until reversed, vacated or set aside, and the rule of *res adjudicata* applies to audits of claims by a board of supervisors to the same extent that it does to other judicial determinations. *People v. Sutherland* (1911), 147 App. Div. 668, 132 N. Y. Supp. 588.

Appointment of assistants in county offices.—The amendment of 1911 authorizes boards of supervisors to prescribe or fix the mode or manner in which those authorized by law to appoint clerks, assistants and employees in county offices should exercise the power and does not confer upon boards of supervisors the power themselves to make such appointments. *Sheldon v. MacArthur* (1911), 73 Misc. 575, 133 N. Y. Supp. 194.

Compensation of county treasurer; increase during term.—The board of supervisors has no authority to increase the compensation of a county treasurer during his term. An additional allowance for clerk hire during the term of any county treasurer necessarily increases his compensation. *Rept. of Atty. Genl., Mch. 7, 1912.*

§ 23. **Compensation of supervisors.**—For the services of supervisors, except in the counties of Albany, Columbia, Dutchess, Erie, Herkimer, Montgomery, Niagara, Oneida, Onondaga, Rensselaer, Rockland, Schenectady, Steuben and Westchester, each supervisor shall receive from the county compensation at the rate of four dollars per day for each calendar day's actual attendance at the sessions of their respective boards, and mileage at the rate of eight cents per mile, for once going and returning from his residence to the place where the sessions of the board shall be held, by the most usual route, for each regular and special session. In the counties of Herkimer, Niagara, Rockland, Schenectady and Steuben each super-

visor shall receive an annual salary, in the county of Herkimer of one hundred and *twenty-dollars and the mileage hereinabove prescribed, in the county of Niagara of three hundred dollars, in the county of Rockland of four hundred dollars, in the county of Schenectady of five hundred dollars and in the county of Steuben of one hundred and fifty dollars, in lieu of any per diem compensation. In the county of Dutchess each supervisor shall receive an annual salary from the county of one hundred and fifty dollars and also mileage at the rate of ten cents per mile for going and returning, once in each week during the annual session of the board of supervisors and when the board is sitting as a board of county canvassers, by the most usually traveled route, from his residence to the place where the sessions of the board shall be held, and in addition thereto compensation at the rate of four dollars per day and mileage as hereinabove provided for each special session of the board which he attends; such compensation and mileage to be paid by the county treasurer on the last day of the annual session in each year. Each supervisor, except in the counties of Albany, Columbia, Dutchess, Erie, Montgomery, Niagara, Oneida, Onondaga, Rensselaer, Schenectady and Westchester, may also receive compensation from the county at the rate of four dollars per day while actually engaged in any investigation or other duty, which may be lawfully committed to him by the board, except for services rendered when the board is in session and, if such investigation or duty require his attendance at a place away from his residence, and five miles or more distant from the place where the board shall hold its sessions, his actual expenses incurred therein. Each supervisor in the county of Dutchess shall also be entitled to receive in addition to the compensation hereinabove provided, to be paid in the same time and manner, compensation at the rate of four dollars per day while actually engaged in any investigation or other duty which may be lawfully committed to him by the board together with his actual expenses incurred therein. No other compensation or allowance shall be made to any supervisor for his services, except such as shall be by law a town charge, except that in the counties of Niagara and Herkimer each supervisor, while heretofore or hereafter actually engaged in any investigation, or in the performance of any other duty, which shall have been legally delegated to him by the board of supervisors, except when the board is in session, shall be entitled to receive in addition to the compensation hereinbefore provided, his actual expenses incurred therein. The board of supervisors of any county may also allow to each member of the board for his services in making a copy of the assessment-roll, three cents for each written line for the first one hundred lines, two cents per line for the second hundred written lines, and one cent per line for all written lines in excess of two hundred, and one cent for each line of the tax-roll actually extended by him. (*Amended by L. 1910, ch. 279, L. 1911, ch. 554 and L. 1912, ch. 34, in effect Mch. 7, 1912.*)

* So in original.

L. 1912, chs. 149, 239.

Tuberculosis hospitals.

§§ 48, 49-a, 51.

§ 48. General powers and duties of superintendent of tuberculosis hospital.—*Subdivision 5, amended by L. 1912, chs. 149 and 239, in effect Apr. 9, 1912, as follows:*

5. Shall receive into the hospital, under the general direction of the board of managers, in the order of application, any person found to be suffering from tuberculosis in any form who is entitled to admission thereto under the provisions of this chapter; and shall also receive persons from other counties as hereinafter provided. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their name, age, sex, color, marital condition, residence, occupation and place of last employment.

Note.—The amendments by the two chapters are identical. The governor signed the same legislative bill twice.

§ 49-a. Maintenance of patients in the county in which hospital is situated.—Wherever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause such inquiry to be made as he may deem necessary, as to his circumstances, and of the relatives of such patient legally liable for his support. If he find that such patient, or said relatives are able to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have the same power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, as is possessed by an overseer of the poor in like circumstances. If the superintendent find that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. When any indigent patient shall have been admitted to any such hospital as a resident of the county in which the hospital is located, and it shall be found that such patient has not acquired a settlement within such county under the provisions of the poor law, the superintendent of such hospital shall collect from the county, city or town in which such patient has a settlement the cost of his maintenance in such hospital, or may in his discretion return such patient to the locality in which he has a settlement. (*Added by L. 1909, ch. 341 and L. 1912, chs. 149 and 239, in effect Apr. 9, 1912.*)

§ 51. Annual statement.

The evident purpose of the publication of statements is to assure publicity for certain acts of the board of supervisors and at a particular time. Thus, where publication of the abstract of the bills and accounts audited by the board of supervisors of a county was not made at the time fixed by statute, but was made within a reasonable time afterwards, the claim for such publication is a proper county charge. *Rept. of Atty. Genl. (1911), Vol. 2, p. 544.*

§§ 117, 140, 144, 180.

Liability of owners of dogs.

L. 1912, ch. 200.

§ 117. **Liability of owners of dogs for injuries.**—The owner or possessor of any dog that shall kill, injure or wound any sheep or lambs, or Angora goats or kids, shall be liable for the value of such sheep or lamb, or Angora goat or kid, to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him that his dog was mischievous or disposed to kill or injure sheep or Angora goats. In any action brought against the owner or possessor of a dog for the injuring of sheep, lambs, Angora goats or kids, the injury for which a recovery may be had may include the permanent fright of such sheep, lambs, Angora goats or kids caused by the chasing or worrying thereof by such dog; and if *prima facie* evidence be adduced by the plaintiff of such worrying or chasing it shall be incumbent on the defendant to prove that the same did not result in the permanent fright of the sheep, lambs, Angora goats or kids alleged to have been injured. The terms "injury" or "injuring," as used in section one hundred and fourteen or in the ensuing sections of this article, in relation to the claims of an owner of any sheep, lambs, Angora goats or kids, against the owner or possessor of the dog or against a town or a town fund, or in relation to the purposes for which taxes, penalties or other moneys, shall be applied, shall include injury consisting of permanent fright of sheep, lambs, Angora goats or kids, caused by the worrying or chasing thereof by a dog. (*Amended by L. 1912, ch. 200, in effect Apr. 8, 1912.*)

§ 140. **Election, appointment, term of office and undertaking of county treasurer.**

Additional compensation.—Where, by a resolution of the board of supervisors passed in 1889, pursuant to chapter 346 of the Laws of 1877 and chapter 233 of the Laws of 1880, the salary of a county treasurer was fixed at a certain sum which it was provided should be in full of any and every interest, fee or compensation, he is, nevertheless, entitled, in addition to such salary, to the compensation subsequently provided by the Legislature in the Liquor Tax Law for collecting the liquor taxes, making reports and issuing licenses, and also to the compensation provided by the bank tax law (chapter 550 of 1901) for the additional duties imposed upon him by the latter act. *Montgomery v. Vosburgh* (1911), 74 Misc. 562.

§ 144. **Designate banks of deposit.**

Deposit of funds by county treasurer.—The board of supervisors has no power to direct the county treasurer where he shall deposit the moneys of the county that come into his hands. It would be a grave injustice to compel the county treasurer to deposit moneys contrary to his judgment for which he is obliged to give a bond and for which he remains on that bond liable to the county, notwithstanding the fact that the depository selected is also required to give a bond for the faithful performance of its duties as such depository. *Rept. of Atty. Genl. (1911), Vol. 2, p. 608.*

§ 180. **Coroners.**—*Subdivision 1, amended by L. 1912, ch. 91, in effect Apr. 3, 1912, as follows:*

1. To be elected in each of the counties a sheriff, and in each of the counties containing a population of one hundred thousand and over, four

L. 1912, ch.544.

Assistant district attorneys.

§§ 194, 203.

coroners, and in all other counties such number of coroners, not more than four, as shall be fixed by the board of supervisors, who shall respectively hold their offices for three years from and including the first day of January succeeding their election. The board of supervisors of a county containing a population of less than one hundred thousand, and having more than one coroner, may, by resolution, determine that after the first day of January of a year to be specified in such resolution, the number of coroners in such county shall be reduced to a specified number not less than one, and may by such resolution fix the terms of coroners to be thereafter elected in such county so that the terms of all the coroners therein will expire on the first day of January of the year specified in the resolution.

A sheriff appointed by the Governor to fill a vacancy holds office only to the commencement of the political year next succeeding the first annual election after the happening of the vacancy. Rept. of Atty. Genl. (1911), Vol. 2, p. 594.

A person elected to fill a vacancy in the office of coroner is entitled to hold the office for a full term of three years. Rept. of Atty. Genl. (1911), Vol. 2, p. 578.

§ 194. Coroners may employ surgeons to make post mortem examinations.

The appointment of a coroner's physician is personal to each coroner and the term of office of each physician is coterminus with that of the coroner who appoints him unless he has been sooner removed. Matter of Nanmack (1911), 145 App. Div. 289, 130 N. Y. Supp. 211.

§ 203. In Erie, Monroe, Onondaga, Rensselaer, Niagara and Westchester counties.—The district attorney of Erie county may appoint in and for the county of Erie, in the manner provided in the last section, and with like powers, such number of assistants as shall be fixed and determined by resolution of the board of supervisors of Erie county. All of the persons so appointed shall be called assistant district attorneys. Each of said assistant district attorneys shall receive such salary as shall be fixed and determined by said board of supervisors. The district attorney shall designate in the order appointing such assistants the salary which each of such assistants shall receive, subject, however, to the limitations prescribed by such resolution of the board of supervisors. The three assistant district attorneys and the two deputy assistant district attorneys now in office shall continue to receive the same salaries that are now paid them until the board of supervisors shall by resolution fix and determine the salaries which such assistants and deputies shall receive pursuant to the provisions of this section. Said assistants shall severally take the constitutional oath of office before entering upon the duties thereof; and the district attorney shall be responsible for their acts. Said district attorney may designate, in writing, to be filed in the office of the clerk of said county, one of his said assistants to be the acting district attorney in the absence from said county or other inability of said district attorney; and the assistant so designated shall during such absence or inability of said district attorney perform the duties of the office. Such designation may be revoked by said district attorney in writing, to be filed in said county clerk's office. The

district attorney of Monroe county may appoint, in and for the county of Monroe, in the manner provided in the last section, and with like powers, three assistants, to be called respectively, the first, second and third assistant district attorneys, and two deputy assistants, to be called respectively, the first and second deputy assistant district attorneys, who shall severally take the constitutional oath of office before entering upon the duties thereof, and the district attorney shall be responsible for their acts. In Monroe county the salaries of the assistant district attorneys and the deputy assistant district attorneys shall be fixed by the board of supervisors as follows: The salary of the first assistant district attorney shall not be less than two thousand dollars per year, payable monthly; the salary of the second assistant district attorney shall not be less than eighteen hundred dollars per year, payable monthly; the salary of the third assistant district attorney shall not be less than sixteen hundred dollars per year, payable monthly; the salary of the first deputy assistant district attorney shall not be less than twelve hundred dollars per year, payable monthly; the salary of the second deputy assistant district attorney shall not be less than seven hundred and twenty dollars per year, payable monthly; and until the salaries of said officials are so fixed by the board of supervisors, they shall be as above stated. The district attorney of Monroe county and his assistants and such deputy assistants shall conduct, on the part of the people, all preliminary examinations in the police court of the city of Rochester, and, subject to the right of a complainant to appear personally or by attorney, all other prosecutions for crime therein; and may conduct prosecutions therein for violations of the penal ordinances of the said city, and appeals therefrom, and in such event one-half of the salary of such first deputy shall be a charge upon the city of Rochester and assessed back upon said city by the board of supervisors of Monroe county; but the corporation counsel of the said city shall have the power to prosecute any person for the violation of an ordinance and to conduct proceedings therefor, or an appeal therefrom. The district attorney of Onondaga county may appoint in and for said county, in the manner provided in the last section, and with like powers, two assistants, to be called respectively the first and second assistant district attorneys, each of whom shall take the constitutional oath of office before entering upon the duties thereof; and the district attorney of said county shall be responsible for their acts. The district attorney of Westchester county may appoint in and for the county of Westchester, in the manner provided in the last section, and with like powers, two assistants, to be called respectively the first and second assistant district attorney, who shall severally take the constitutional oath of office before entering upon the duties thereof; and the district attorney shall be responsible for their acts; and the salary of each shall be fixed by the board of supervisors. The district attorneys of the counties of Erie, Onondaga and Monroe may also appoint a person to act as interpreter at all sessions of the grand juries of such counties and of the city of Buffalo,

L. 1912, chs. 37, 549.

County judges and surrogates.

§ 232.

whose compensation shall be fixed by the court in and for which such grand jury may be empaneled. The district attorneys of the counties of Erie and Monroe shall each be entitled to receive, in addition to their salary, all costs collected by them in actions and proceedings prosecuted and defended by them. The county judge, or the special county judge, of the county of Monroe, or any supreme court judge, shall have power, on the application of the district attorney of Monroe county, to order and direct the county treasurer of Monroe county to pay to the district attorney any sum of money expended or incurred by him in the performance of his duties in his office, and the county judge of the county of Rensselaer, or any supreme court judge, shall have power, on the application of the district attorney of Rensselaer county, to order and direct the county treasurer of Rensselaer county to pay to the district attorney any sum of money expended or incurred by him in the performance of his duties in his office, and the county judge of the county of Albany, or any supreme court judge, shall have power, on the application of the district attorney of Albany county, to order and direct the county treasurer of Albany county to pay to the district attorney of such county any sum of money expended or incurred by him in the performance of his duties in his office. The district attorney of Niagara county shall have charge of and conduct on the part of the people all preliminary examinations in the police courts of the cities Lockport, North Tonawanda and Niagara Falls, either in person or by his assistant. In lieu of the necessary traveling expenses and other disbursements incurred in the performance of these additional duties, either by himself or his assistant or stenographer, the district attorney of Niagara county shall receive an amount to be fixed by the board of supervisors of Niagara county at not less than one thousand two hundred dollars per annum, payable monthly by the county treasurer of Niagara county, and the assistant district attorney shall receive an amount to be fixed by the board of supervisors of Niagara county, at not less than five hundred dollars per annum, payable monthly by the county treasurer of Niagara county, and the district attorney's stenographer shall receive an amount to be fixed by the board of supervisors of Niagara county at not less than four hundred dollars per annum, payable monthly by the county treasurer of Niagara county. Until such amount is so fixed by the board of supervisors it shall be as above stated. (*Amended by L. 1911, ch. 95 and L. 1912, ch. 544, in effect Apr. 19, 1912.*)

§ 232. Compensation of county judges and surrogates.—*Subdivision 1, amended by L. 1912, ch. 549, in effect Apr. 19, 1912, as follows:*

1. Albany..... \$ 7,000 00 6,500 00

Subdivision 14 amended by L. 1912, ch. 37, in effect Mch. 13, 1912, as follows:

14. Erie..... \$ 7,500 00 7,500 00

§§ 232, 240.

County judges and surrogates.

L. 1912, chs. 37, 92, 549.

Subdivisions 27 and 58 amended by L. 1912, ch. 549, in effect Apr. 19, 1912, as follows:

| | | |
|----------------------|-------------|-----------|
| 27. Monroe..... | \$ 7,000 00 | 7,000 00 |
| 58. Westchester..... | 10,000 00 | 10,000 00 |

Subdivision 64 added by L. 1912, ch. 37, in effect Mch. 13, 1912, as follows:

64. The salaries provided in subdivision fourteen of this section for the county judge and surrogate of the county of Erie shall take effect upon the expiration of the term of the present incumbents, respectively, and until the expiration of said terms such officers shall receive the salaries authorized by law on January first, nineteen hundred and nine.

Subdivision 64 added by L. 1912, ch. 92, in effect Apr. 3, 1912, as follows:

64. In addition to the salary herein provided to be paid to the surrogate of Chautauqua county, he shall be entitled to receive his necessary expenses while holding court in said county at places other than the county seat at Mayville. Such expense account shall be audited by the board of supervisors of said county and shall not exceed the sum of five hundred dollars per annum.

Subdivision 65 added by L. 1912, ch. 549, in effect Apr. 19, 1912, as follows:

65. The salaries provided in subdivisions one, twenty-seven and fifty-eight for the county judge and surrogate of the county of Albany, for the county judge and surrogate of the county of Monroe, and for the surrogate of the county of Westchester, shall take effect upon the expiration of the terms of the present incumbents respectively, and until the expiration of such terms such county judges and surrogates shall receive the salaries authorized by law on January first, nineteen hundred and twelve.

§ 240. County charges.

Necessary expenses of district attorney; investigation of state contracts.—As subd. 2 of this section makes expenses necessarily incurred by a district attorney in original actions or proceedings arising in his own county, a county charge, he has, when acting in good faith, authority to employ a civil engineer to make an expert investigation upon receiving complaints that a contractor building state and county roads was not properly performing his contract. The board of supervisors of the county will be directed on certiorari to audit the claim of said engineer where there is nothing to impeach the good faith of the district attorney in employing him, or to show that the charges were unreasonable. It is immaterial that the charge against the contractor was not presented to the grand jury or that after being held by a magistrate he was discharged on habeas corpus by the county judge. *People ex rel. Koetteritz v. Board of Supervisors* (1911), 148 App. Div. 392.

Employment of expert witnesses.—A district attorney has power under this section to obligate his county to pay a reasonable sum for the services of an expert witness in a criminal trial. Although the witness' bill is subject to review and audit by the board of supervisors and although the board is not bound by any

L. 1912, chs. 95, 532.

Peace officers.

§ 250.

specific sum which the district attorney had agreed to pay, it must audit a reasonable sum. Where the only evidence before the board is that ten dollars per day is the minimum charge for such services in the county, it is not justified in reducing the bill to five dollars a day and, on certiorari, such determination will be annulled, and the matter remitted for further audit. *People ex rel. Manley v. Board of Supervisors* (1911), 148 App. Div. 584.

§ 250. **Expenses of peace officer for injuries.**—If heretofore or hereafter a peace officer of a county be injured while executing or attempting to execute a warrant or process of a criminal court, the board of supervisors of such county may, by resolution, determine that the reasonable medical and hospital expenses of such peace officer incurred on account of such injuries, not exceeding an amount specified in the resolution, shall be paid by the county, and such expenses shall thereupon become a county charge. (*Added by L. 1912, ch. 95, in effect Apr. 3, 1912.*)

COUNTY JUDGES.

Compensation in certain counties; County L., § 232.

COURT OF GENERAL SESSIONS.

Code of Criminal Procedure.

§ 55. **Accommodation for courts and officers, et cetera.**—The courts have the same power to direct suitable provisions to be made for their accommodation as is now possessed by the supreme court. The judges of the court of general sessions of the city and county of New York must appoint a clerk, not more than thirteen deputy clerks, five interpreters, six stenographers, six record clerks, six chief court attendants, a warden to the regular grand jury, and a warden to the additional grand jury, and such warden shall hold his office during the pleasure of said judges. (*Amended by L. 1912, ch. 532, in effect Apr. 19, 1912.*)

DEBTOR AND CREDITOR LAW.

(L. 1909, ch. 17.)

§ 22. **Assignments; examination of witnesses.**

An examination should be had before a judge, rather than before a referee, for the latter course would entail unnecessary expense upon the parties. *Matter of U. S. Restaurant & Realty Co.* (1911), 146 App. Div. 114, 130 N. Y. Supp. 606.

An assignee for the benefit of creditors is entitled to examine persons who have taken possession of and sold the bankrupt's property under the contention that they delivered it to the insolvent under contracts of conditional sale. *Matter of U. S. Restaurant & Realty Co.* (1911), 146 App. Div. 114, 130 N. Y. Supp. 606.

§ 150. **Discharge of bankrupt from judgment.**

Cancellation of a judgment will be denied where it appears from the bankrupt's

§ 230.

Assignments.

schedules in bankruptcy that the claim from which he seeks to be discharged was not properly scheduled in that it stated that the residence of the claimant was "unknown" when the bankrupt had actual notice thereof. *Guasti v. Miller* (1911), 203 N. Y. 259.

§ 230. Compositions by joint debtors.

A release, containing no reservation, operates to discharge all the joint tortfeasors; but, where the instrument expressly reserves the right to pursue the others, it is not technically a release, but a covenant not to sue, and they are not discharged. *Walsh v. N. Y. C. & H. R. R. Co.* (1912), 204 N. Y. 58.

One satisfaction.—One who has been injured by the joint wrong of several parties may recover his damages against either or all; but, although there may be several suits and recoveries, there can be but one satisfaction. *Walsh v. N. Y. Cent. & H. R. R. Co.* (1912), 204 N. Y. 58.

DECEDENT ESTATE LAW.

(L. 1909, ch. 18.)

§ 19. Devise or bequest to certain benevolent, charitable and scientific corporations.—(*Repealed by L. 1911, ch. 857, in effect July 29, 1911.*)

Application.—Where a testator made his will on the sixth day of February and died on the sixth day of April following, the will was not made "at least two months before the death of the testator" and a bequest to a benevolent corporation contained therein is invalid. *Matter of Babcock* (1911), 74 Misc. 31, 133 N. Y. Supp. 655

§ 21. Manner of execution of will.

Form or language of will.—The law does not require that a will should assume any particular form or language. It is sufficient if the instrument discloses the intention of the maker respecting the disposition of his property. *Matter of Hansen* (1911), 72 Misc. 610, 132 N. Y. Supp. 257.

Form should not be raised above substance in order to destroy a will, and the substantial thing is whether a paper reads straightforward and without interruption from the beginning to the end, and when thus read the signature is found at the end. The testator, a layman, drew his own will, using a short-form printed blank. In the space intended for bequests he wrote: I "will and direct that my estate be settled as per the provisions of the pages hereto attached and numbered from one to six inclusive and this is to stand unchallenged and unchanged in any form provided I decease before a will is drawn by my attorney." Immediately after these words in the blank space there were attached by two pins six sheets in the handwriting of the decedent, written upon one side only, numbered by him at the top consecutively from one to six, which contain the disposing provisions of the will. Nothing was written in the blank form except as stated. The signature of the deceased was written in the usual place on the right-hand side at the bottom of the printed form directly beneath the clause commencing "in witness whereof," as filled out with the date. The signature of the two witnesses were to the left of the signature of the decedent and right beneath the printed word "witnesses" on the form. Below the signature was a printed attestation clause, but it was not filled out or signed. When the paper was signed by the decedent and the two witnesses, the six separate pages were already attached in the manner above described. Due proof of the execution of the paper as a will in compliance with the requirements of the statute was shown by the testimony of the subscribing witnesses. It was held that the will when read consecutively has the signature at the physical and natural end thereof and should be admitted to probate. *Matter of Field* (1912), 204 N. Y. 448, revg. 144 App. Div. 737, 129 N. Y. Supp. 590, and distinguishing and limiting *Matter of Whitney*, 153 N. Y. 259; *Matter of Andrews*, 162 N. Y. 1.

Publication of will.—Where both of the subscribing witnesses to a holographic will positively swear that there was no publication of the instrument by the testator and that they did not know that it was a will until long after they had signed it, probate will be refused. *Matter of Wilmerding* (1912), 75 Misc. 432.

Punctuation cannot control in the construction of a will and when wanting may be supplied in order to separate words that are not clearly related in sequence. *Matter of Hansen* (1911), 72 Misc. 610, 132 N. Y. Supp. 257.

Construction of will.—It is an established rule that the courts should give effect to every word and provision of a will, in so far as they may, without violating the

§§ 23, 29, 34, 81.

Wills; proof and revocation.

L. 1912, ch. 384.

intent of the testator or well-established rules of law. *Eldt v. Eldt* (1911), 203 N. Y. 325.

Courts have no power to construct a will when none has in fact been made; nor to import into a will new provisions which are designed to create a testamentary disposition which is neither expressed nor necessarily to be implied. *Dreyer v. Reisman* (1911), 202 N. Y. 476.

Signature by witnesses.—Where one of the witnesses to a will, without any fraud or intent to wrong, signs the name of the testator to the attestation clause instead of his own name, the will may be admitted to probate. *Matter of Jacobs* (1911), 73 Misc. 162, 132 N. Y. Supp. 481.

Where the testimony of two of the three witnesses to a will is precise and sufficient to prove that the execution of the paper propounded conformed with all the requirements of statute, no presumption against the sufficiency of the execution arises from the fact that the third witness has forgotten nearly all the essentials to a due execution. *Matter of McCabe* (1911), 75 Misc. 35.

§ 23. What wills may be proved.

A holographic will made without witnesses by a resident of a foreign state while sojourning here, properly executed according to the laws of said state, is entitled to probate in this state as to personal property. *Matter of Seixas* (1911), 73 Misc. 488, 133 N. Y. Supp. 406.

§ 29. Devise or bequest to child or descendant, or to a brother or sister of the testator not to lapse.—Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, or to a brother or sister of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate. (*Amended by L. 1912, ch. 384, in effect May 5, 1912.*)

§ 34. Revocation of wills.

Changes in a will made by a testator after execution do not destroy the will, and it will be probated as originally executed if the original provisions can be determined. *Matter of Wood* (1911), 144 App. Div. 259, 129 N. Y. Supp. 5.

A testator cannot revoke a bequest by obliterating the clause whereby it is made. The revocation of a will depends on the testatrix's intention, and where, without intending to revoke the whole will but merely wishing to destroy a single bequest, she obliterates the clause making that bequest, the original will may be admitted to probate in the form and condition in which it was when executed if that can be ascertained. *Matter of Van Woert* (1911), 147 App. Div. 483, 131 N. Y. Supp. 748.

§ 81. General rules of descent.

Proof of consanguinity.—One claiming a distributive share in the personal estate of a deceased person must establish his consanguinity by proof and admissions are not enough on such an issue. Proof of the declarations of members of the same family as to the relationship of its members is competent where the declarants are dead or beyond the jurisdiction of the court. On such an issue the court may properly inspect the parties and consider physiological resemblances or dissimilarities but such evidence should be considered only as corroborative of other competent evidence. *Matter of McGerry* (1911), 75 Misc. 98.

§ 98. Distribution of personal property.

The words "legal representatives" are usually taken to mean executors or administrators. *Dwight v. Gibb* (1911), 145 App. Div. 223, 129 N. Y. Supp. 961.

§ 117. Administrators to have same rights and liabilities as executors.

Representation among collaterals after brothers' and sisters' children is not allowed in the distribution of the personal estate of an intestate; and the aunt of an intestate will take to the exclusion of the children and grandchildren of deceased uncles and aunts. *Matter of Youngs* (1911), 73 Misc. 335, 132 N. Y. Supp. 689.

An administrator, so far as his initiative is concerned, is limited by this section to the collection of debts due the estate and marshalling the personal effects of his intestate. Thus, in the absence of proof that mortgaged premises of which an intestate died seized did not descend to an heir, the administrator cannot be allowed credit in his accounts for payments of interest upon the mortgage. *Matter of Roberts* (1911), 72 Misc. 625, 132 N. Y. Supp. 396.

§ 120. Actions for wrongs by or against executors.

The test of survivorship is whether the injury is to pecuniary interests and that it is immaterial whether the wrongdoer profited by the wrong. *Mayer v. Ertheller* (1911), 144 App. Div. 158, 128 N. Y. Supp. 807.

Cause of action for fraud and deceit against a tobacco broker, who induced the plaintiffs to sell a quantity of tobacco by falsely representing that the vendees were financially responsible, survives the death of the defendant and may be continued against his executors. *Mayer v. Ertheller* (1911), 144 App. Div. 158, 128 N. Y. Supp. 807.

§ 121. Action or proceeding by executor of executor.

Application.—Under this statute an executor or administrator of a deceased executor or administrator is merely the temporary custodian of such part of the unadministered estate of the first testator as may come into his hands. As he has no power to compel a delivery to himself, he is under no duty to assume possession, and unless he volunteers to do so he cannot be made liable for the default or misappropriation of others. *Matter of Hayden* (1912), 204 N. Y. 330, 338.

DISTRICT ATTORNEYS.

In certain counties; County L., § 203.

DOGS.

Injuries by, liability of owners; County L., § 117.

DOMESTIC RELATIONS LAW.

(L. 1909, ch. 19.)

§ 7. Voidable marriages.

Under age of consent as ground for annulment of marriage, see *Reid v. Reid* (1911), 72 Misc. 214, 129 N. Y. Supp. 529.

Fraud.—Ill health of one of the parties, constituting fraud, as ground of annulment of marriage, see *Gumbiner v. Gumbiner* (1911), 72 Misc. 211, 131 N. Y. Supp. 85.

§ 10. Marriage a civil contract.

Amendment of 1907.—The effect of the amendment of certain sections of this law by L. 1907, ch. 742, was to recognize the validity of marriages contracted otherwise than in the form prescribed by the statute. *Matter of Hinman* (1911), 147 App. Div. 452, 131 N. Y. Supp. 861.

Upon the repeal of section 19 by L. 1907, ch. 742, it was the legislative intent to remove the absolute inhibition of common-law marriages. *Matter of Smith* (1911), 74 Misc. 11, 133 N. Y. Supp. 730.

The presumption of marriage arising from a cohabitation apparently matrimonial does not assume that the marriage took place at any particular place, manner or time; it means that a legal marriage existed. *Matter of Hinman* (1911), 147 App. Div. 452, 131 N. Y. Supp. 861.

§ 11. By whom a marriage must be solemnized.—The marriage must be solemnized by either:

1. A clergyman or minister of any religion, or by the leader, or either of the two assistant leaders, of the Society for Ethical Culture in the borough of Manhattan in the city of New York, or by the leader of the Society for Ethical Culture in the borough of Brooklyn of the city of New York;

2. A mayor, recorder, alderman, city magistrate, police justice or police magistrate of a city, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section;

3. A justice or judge of a court of record, or of a municipal court, a police justice of a village, or a justice of the peace; except that justices of the peace in cities which contain more than one hundred thousand and less than one million inhabitants, shall have no power to solemnize marriages; or,

4. A written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided, however, that all of such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record

L. 1912, ch. 216.

Marriage licenses.

§§ 13, 14.

Such contract shall be recorded within six months after its execution in the office of the clerk of the county in which the marriage was solemnized.

The word "clergyman," when used in the following sections of this article, includes each person referred to in the first subdivision of this section. The word "magistrate," when so used, includes any person referred to in the second or third subdivision. (*Amended by L. 1911, ch. 610 and L. 1912, ch. 166, in effect Apr. 5, 1912.*)

A police justice in a village has no authority to solemnize a marriage. Rept. of Atty. Genl., Jan. 19, 1912.

§ 13. Marriage licenses.

Indians must procure license.—Clergymen and ministers performing marriages between Indians are governed by the provisions of the Domestic Relations Law, requiring the production of a license by the persons intending to be married. Rept. of Atty. Genl., Feb. 8, 1912.

§ 14. Town and city clerks to issue marriage licenses; form.—The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which license shall be substantially in the following form:

STATE OF NEW YORK,
County of }
City or town of

Know all men by this certificate that any person authorized by law to perform marriage ceremonies within the state of New York to whom this may come, he, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between of in the county of and state of New York and of in the county of and state of New York and to certify the same to be said parties or either of them under his hand and seal in his ministerial or official capacity and thereupon he is required to return his certificate in the form hereto annexed. The statements endorsed hereon or annexed hereto, by me subscribed, contain a full and true abstract of all the facts concerning such parties disclosed by their affidavits or verified statements presented to me upon the application for this license.

In testimony whereof, I have hereunto set my hand and affixed the seal of said town or city at this day of nineteen Seal.

The form of the certificate annexed to said license and therein referred to shall be as follows:

I,, a, residing at in the county of and state of New York do hereby certify that I did on this day of in the

| | | |
|-------|--------------------|-------------------|
| § 15. | Marriage licenses. | L. 1912, ch. 241. |
|-------|--------------------|-------------------|

year A. D., 19...., solemnize the rites of matrimony between
 of in the county of
 and state of New York, and of
 in the county of and state of New York in the
 presence of and
 as witness, and the license therefor is hereto annexed.

Witness my hand at in the county of
 this day of A. D., 19....

In the presence of

.....

.....

.....

There shall be endorsed upon the license or annexed thereto at the end thereof, subscribed by the clerk, an abstract of the facts concerning the parties as disclosed in their affidavits or verified statements at the time of the application for the license made in conformity to the provisions of section fifteen of this chapter.

The license issued, including the abstract of facts, and the certificate duly signed by the person who shall have solemnized the marriage therein authorized shall be returned by him to the office of the town or city clerk who issued the same on or before the tenth day of the month next succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense. (*Amended by L. 1912, ch. 216, in effect Apr. 8, 1912.*)

Return of certificate of marriage to town or city clerk.—A minister or other person performing a marriage ceremony is required to return the certificate of the marriage to the town or city clerk who issued the marriage license, and in addition in the city of New York he is required to make a report of such marriage to the Department of Health. Rept. of Atty. Genl., Feb. 15, 1912.

§ 15. **Duty of town and city clerks.**—It shall be the duty of the town or city clerk when an application for a marriage license is made to him to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his deputies, containing the following information. From the groom: Full name of husband, color, place of residence, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. From the bride: Full name of bride, place of residence, color, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. The said clerk shall also embody in the statement if either or both of the applicants have been previously married, a statement as to whether the former husband or husbands or the former wife or wives of the respective applicants are living or dead and as to

whether either or both of said applicants are divorced persons, if so, when and where the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state. The town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may also examine under oath or otherwise other witnesses as to any material inquiry pertaining to the issuing of the license; provided, however, that in cities of the first class the verified statements and affidavits may be made before any regular clerk of the city clerk's office designated for that purpose by the city clerk. If it appears from the affidavits and statements so taken, that the persons for whose marriage the license in question is demanded are legally competent to marry, the said clerk shall issue such license, except in the following cases. If it shall appear upon an application of the applicants as provided in this section that the man is under twenty-one years of age, or that the woman is under the age of eighteen years, then the town or city clerk before he shall issue a license shall require the written consent to the marriage from both parents of the minor or minors or such as shall then be living, or if the parents of both are dead, then the written consent of the guardian or guardians of such minor or minors. If one of the parents has been missing and has not been seen or heard from for a period of one year preceding the time of the application for the license, although diligent inquiry has been made to learn the whereabouts of such parent, the town or city clerk may issue a license to such minor upon the sworn statement and consent of the other parent. If the marriage of the parents of such minor has been dissolved by decree of divorce or annulment, the consent of the parent to whom the court which granted the decree has awarded the custody of such minor shall be sufficient. If there is no parent or guardian of the minor or minors living to their knowledge then the town or city clerk shall require the written consent to the marriage of the person under whose care or government the minor or minors may be before a license shall be issued. The parents, guardians or other persons whose consents it shall be necessary to obtain before the license shall issue, shall personally appear before the town or city clerk and execute the same if they are residents of the state of New York and physically able so to do. If they are non-residents of the state the required consents may be executed and duly acknowledged without the state, but the consent with a certificate attached showing the authority of the officer to take acknowledgments must be duly filed with the town or city clerk before a license shall issue. Before issuing any license herein provided for, the town or city clerk shall be entitled to a fee of one dollar, which sum shall be paid by the applicants before or at the time the license is issued; and all such fees so received by the clerks of cities shall be paid monthly to the treasurer of the city wherein such license is issued. Any town or city clerk who shall issue a license to marry any persons one or

§§ 19, 51, 52.

Marriage licenses.

L. 1912, ch. 241.

both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the procuring of the consents provided for by this article, which shall now that the parties authorized by said license to be married are legally competent to marry shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. In any city the fees collected for the issuing of a marriage license, or for solemnizing a marriage, so far as collected for services rendered by any officer or employee of such city, shall be paid into the city treasury and may by ordinance be credited to any fund therein designated, and said ordinance, when duly enacted, shall have the force of law in such city. (*Amended by L. 1912, ch. 241, in effect Apr. 10, 1912.*)

Age of female to whom license may be issued.—This section does not place any limitation upon the age of a female to whom a license may be issued. If the applicant is a woman under eighteen years of age, the town clerk must procure the consents specified in the statute. Rept. of Atty. Genl. (1911), Vol. 2, p. 632.

§ 19. **Records to be kept by town and city clerks.**—Each town and city clerk hereby empowered to issue marriage licenses shall keep a book in which he shall record and index all affidavits, statements, consents and licenses, together with the certificate attached showing the performance of the marriage ceremony, which book shall be kept and preserved as a part of the public records of his office. Whenever an application is made for a search of such records the city or town clerk may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of fifty cents for a search of one year and a further fee of ten cents for each additional year, which fees shall be paid in advance of such search. On or before the fifteenth day of each month the said town and city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original of each affidavit, statement, consent, license and certificate, which have been filed or made before him during the preceding month. He shall not be required to file any of said documents until the license is returned with the certificate showing that the marriage to which they refer has been actually performed. (*Amended by L. 1912, ch. 241, in effect Apr. 10, 1912.*)

§ 51. **Powers of married woman.**

Validity of contracts.—A contract involving a violation or intentional evasion of the provisions of this section is invalid and will not be enforced. Matter of Kopf (1911), 73 Misc. 198, 132 N. Y. Supp. 719.

§ 52. **Insurance of husband's life.**

The policy must be the absolute property of the wife or her children, that is, payable to her, her children or her estate. It may be taken out by the husband, and the premiums up to \$500 per annum paid by him. Still the policy must be one which the married woman may dispose of by will, or may, with the written consent of her husband, assign or surrender to the company. This requirement of the hus-

band's assent is not because he is the owner of the policy, but is to protect widows and orphans. The general legislation enlarging the powers of married women does not affect the special legislation restricting their powers as to insurance policies. *In re White*, 174 Fed. 333 (1909).

§ 55. Contract of married woman not to bind husband.

A husband is liable in equity to one who furnishes necessities requisite for the support of his deserted wife and infant children or to one who furnishes the wife with money with which to procure such necessities. *De Brauwere v. De Brauwere* (1911), 203 N. Y. 460, affg. 144 App. Div. 521, 129 N. Y. Supp. 587, where it was held that when a husband deserts his wife and there is a legal adjudication requiring him to furnish his wife a certain sum of money for her support, and the wife from her separate property furnishes the money to buy necessities, she has a cause of action against the husband.

A father is liable for the funeral expenses of his infant child though he is living separate from his wife and she has had the custody of the child. *Gobber v. Emptying* (1911), 72 Misc. 10, 129 N. Y. Supp. 4.

§ 56. Husband and wife may convey to each other or make partition.

The intention and meaning of this section is simply to authorize the husband and wife to convey their property to others, or among themselves, with the utmost freedom. It *permits* them to divide or "partition" any real property which they may hold as tenants by the entirety, or otherwise. It does not, however, enable one tenant by the entirety to *compel* partition. *Bartkowalk v. Sampson* (1911), 73 Misc. 446, 452, 133 N. Y. Supp. 401.

§ 58. Pardon not to restore marital rights.

Effect of pardon upon right to curtesy.—Where a married man of whose marriage children were born capable of inheriting their estate is sentenced to imprisonment for life, and thereafter his wife marries again and he is subsequently pardoned, and his wife afterward dies seized of real estate which she acquired after her second marriage, the first husband is not entitled to curtesy therein. *Ghehin v. Ghehin* (1911), 72 Misc. 511, 131 N. Y. Supp. 373.

§ 81. Appointment of guardians by parent.

See *Matter of Scoville* (1911), 72 Misc. 310, 131 N. Y. Supp. 205.

This section does not apply after the divorce of the parents. *Matter of Wagner* (1912), 75 Misc. 419.

§ 112. Requisites of voluntary adoption.

A foster parent must be a resident of the county in which the county judge who makes an order of adoption resides and holds office. *Matter of Carpenter* (1911), 74 Misc. 127, 133 N. Y. Supp. 735.

Question of the mother's abandonment of the child may be raised on her motion to vacate an order of adoption, in the absence of notice to her of such proceedings. *Matter of Moore* (1911), 72 Misc. 644, 132 N. Y. Supp. 249.

§ 113. Order.

Where an order of adoption recited all the jurisdictional facts necessary to its validity and that it appeared to the satisfaction of the county judge "that said minor has been abandoned by its parents," an allegation in the traverse to the return to a writ of habeas corpus that the mother had no notice of the proceeding does not impeach the jurisdiction of the County Court to make the order nor require the court which issues the writ to take proof on that question. Such an allega-

§§ 39.Appeals on questions of law.

tion is consistent with and not a denial of the finding of the county judge that the mother had abandoned the child, and the statute dispenses with notice in such a case. *Matter of Livingston* (1911), 74 Misc. 494.

DRAINAGE LAW.

(L. 1909, ch. 20.)

§ 39. Appeals on questions of law; how taken.

The Appellate Division has no jurisdiction to pass upon the question as to whether the decision of commissioners appointed pursuant to section 4 and the order of the County Court affirming the same are contrary to the weight of evidence. *Matter of Spring Valley Swamp* (1911), 145 App. Div. 636, 129 N. Y. Supp. 918.

EDUCATION LAW.

(L. 1910, ch. 140.)

§ 121. **Formation of new district.**—1. A district superintendent may organize a new school district out of the territory of one or more school districts which are wholly within his supervisory district, whenever the educational interests of the community require it. If there is an outstanding bonded indebtedness chargeable against the district or districts out of the territory of which such new district is organized, the district superintendent shall apportion said indebtedness between such new district and the remaining portion of the district or districts out of which such new district is organized, according to the assessed valuation thereof, and the portion of the indebtedness so apportioned shall become a charge for principal and interest upon the respective districts as though the same had been incurred by said districts separately.

2. The district superintendents of two or more adjoining supervisory districts when public interests require it, may form a joint school district out of the adjoining portions of their respective districts. (*Amended by L. 1912, ch. 294, in effect Apr. 12, 1912.*)

§ 130. **Division of union free school district which contains two incorporated villages.**—(*Repealed by L. 1911, ch. 334, in effect June 15, 1911.*)

Separation of village from union free school district.—A meeting of an incorporated village held pursuant to sections 130, 131 of the Education Law (repealed by L. 1911, ch. 334) voted that the village be separated from the union school district and be and become a separate school district. Pursuant to said section 131(3) the result of the canvass of the vote at said meeting was certified to the county school commissioner with a request that he certify that the territory of the village was a separate school district but he declined so to do until satisfied that the entire territory of the village was within the boundaries of the said union school district. Under section 880(7) of the Education Law the school district and an elector thereof took an appeal to the State Commissioner of Education who, under section 881 of said statute, stayed the issuance of the certificate separating the school district as voted, and a motion of the village to dismiss the appeal upon the ground that the State Commissioner of Education had no jurisdiction to hear it was denied. It was held that the decision of the question whether the village was not wholly within the said union school district as well as the status of the appellants was for the State Commissioner of Education under the provisions of the Education Law; that mandamus would not lie to compel the State Commissioner of Education to rescind the order staying the issuance of a certificate and compel the county school commissioner to issue the said certificate. *People ex rel. Merrill v. Cooley* (1912), 75 Misc. 188.

§ 139. **Collection and distribution of moneys due dissolved district.**

Action against former treasurer of dissolved district.—After the dissolution of a school district and its consolidation in its entirety with another district, pursuant to the provisions of the Education Law, the board of education of the consolidated districts may, after demand and refusal, maintain an action against the former treasurer of the dissolved school district individually to recover moneys in his

§§ 233, 310, 384.

Board of education.

L. 1912, ch. 215.

hands which belonged to the dissolved school district, when it is not claimed that said district had at the time of its dissolution any debts or obligations to which the money was applicable. *Board of Education v. Storms* (1911), 147 App. Div. 679.

§ 233. Filling vacancy in office of trustee.

Vacancies in board of education of union free school district.—Where a member of a board of education of a union free school district, whose term will expire July 31, 1911, is re-elected for a full term, at the annual election in May, 1911, but soon afterward dies, successive vacancies will be occasioned, one for the term nearly completed and one August 1st thereafter, on the beginning of the full term for which he was re-elected, each of which vacancies may be filled by special election, if it is ordered, or by appointment by the board of education, in case no special election is held. If the vacancy is filled by election, it will be filled for the remainder of the term, and if by appointment, it will be until the next annual election. *Rept. of Atty. Genl. (1911), Vol. 2, p. 572.*

§ 310. Powers and duties of board of education.—*Subdivision 21, as added by L. 1910, ch. 602, amended by L. 1912, ch. 215, in effect Apr. 8, 1912, as follows:*

21. To provide for the medical inspection of all children in attendance upon schools under their supervision whenever in their judgment such inspection shall be necessary and to pay any expense incurred therefor out of funds authorized by the voters of the district or city or which may properly be set aside for such purpose by the common council or the board of estimate and apportionment of a city. Provided, however, that no such funds shall be appropriated or authorized by the voters of a union free school district situate wholly within a city of the third class, unless the board of education shall incorporate in the notice of the annual meeting or election a statement to the effect that at such meeting or election a proposition to appropriate such funds will be voted upon, specifying the amount.

§ 384. Qualifications of district superintendents.

Constitutionality of subd. 2.—The provisions of subdivision 2, as amended in 1910, that, in addition to being twenty-one years of age and a citizen of the United States and a resident of the state, a person to be eligible to the office of district superintendent of schools must possess a teacher's certificate and "also pass an examination prescribed by the commissioner of education on the supervision of courses of study in agriculture and teaching the same," are remedial in their nature to the end that fit, proper and reasonably well qualified persons should be district superintendents of schools, do not impose any arbitrary or unreasonable qualifications, and do not in any way violate the provisions of section 1 of article I of the State Constitution forbidding any citizen to be deprived of his rights or privileges "unless by the law of the land, or the judgment of his peers"; or the provisions of section 2 of article X of the State Constitution providing that officers shall be elected by the people or appointed; or the provisions of section 1 of article XIII of the State Constitution prescribing an official oath and providing that "no other oath, declaration or test shall be required as a qualification for any office of public trust"; or the provisions of the 14th amendment of the Federal Constitution relating to the privileges and immunities of citizens and the equal protection of the laws. *People ex rel. Pintler v. Transue* (1911), 74 Misc. 504, 132 N. Y. Supp. 497.

L. 1912, chs. 77, 276.

Apportionment of school moneys.

§§ 395, 493, 494.

§ 395. General powers and duties of district superintendent.

The duties of district superintendent of schools are important.—He is in constant touch with the teachers and pupils in the rural schools. He advises and in a large measure controls the teachers in their professional work and directs how the schools shall be conducted. *People ex rel. Pintler v. Transue*, 74 Misc. 504, 132 N. Y. Supp. 497.

§ 493. Apportionment of school moneys.—*Subdivision 6, amended by L. 1912, ch. 276, in effect Apr. 11, 1912, as follows:*

6. To each city and union school district maintaining an academic department, twenty dollars per year for at least thirty-two weeks' instruction or a proportionate amount if for eight weeks or more for each non-resident pupil attending the academic department of such school from districts not maintaining such academic departments and who shall be admitted to such academic department without other expense for tuition than that provided herein. But pupils residing in districts not maintaining a four-year curriculum may be included in this apportionment after having completed the course of study prescribed for the school in the district in which they reside. In the apportionment to cities and union school districts having a population of five thousand or more and employing a superintendent of schools, whose customary charge for non-resident pupils is greater than the sum provided by this subdivision, the commissioner of education may permit the sum so apportioned to be applied upon such customary charge for such non-resident pupils, provided the balance of such customary charge shall be assumed by the school district in which such non-resident pupil is resident, and the payment thereof shall have been provided for at a school district meeting held in such district.

§ 494. Manner of certifying and paying apportionment provided for in preceding section.—Payment from this fund shall be made to the county treasurer of each county for all schools located in such county, by the state treasurer on the warrant of the comptroller or the certificate of the commissioner of education. The commissioner of education immediately after making an apportionment shall certify, or cause to be certified, to the county treasurer of every county included in such apportionment, excepting those counties included within the territory of the city of New York, with respect to his county, the name of each academy, the number of each school district and the town in which it is situated and the name of each city to which money has been allotted and the amount allotted to each. The county treasurer shall, upon the receipt of such certificate and payment from the state treasurer, pay to the treasurer, if there be one, otherwise to the disbursing officer or collector of each school district, academy and city named in the certificate of the commissioner of education, the amount to which said district, academy or city is entitled as shown by such certificate. Any apportionment which shall be made to the city of New York shall be certified and paid to the chamberlain of the city of

§§ 496, 567, 972.

Schools for the blind.

L. 1912, chs. 60, 77.

New York, and any apportionment which shall be made to any private academy situated within the territory of the city of New York, shall be certified and paid directly to the disbursing officer of the academy to which the apportionment is made. (*Amended by L. 1912, ch. 77, in effect Mch. 26, 1912.*)

§ 496. Certificate of apportionment by commissioner of education.—As soon as possible after the making of any annual or general apportionment, the commissioner of education shall certify it, or cause it to be certified, to the county clerk, county treasurer, district superintendents, and city treasurer or chamberlain, in every county in the state; and if it be a supplemental apportionment, then to the county clerk, county treasurer and district superintendents of the county in which the school-house of the district concerned is situated. (*Amended by L. 1912, ch. 77, in effect Mch. 26, 1912.*)

§ 567. Common schools free to resident pupils; tuition from non-resident pupils.

Residence, as used in this statute, does not necessarily mean domicile. Thus, where a man with a family containing children of school age, living in a rural town, hired a part of a house in a district of a neighboring town where a system of graded schools was established, furnished the apartments and moved into them about the first of September and his children attended the schools there, and where, at the close of the school year, the family moved back to their former residence and, at the beginning of the following school year, again moved to the same apartments they had occupied the previous winter, where the furniture they had then used had been left, although the father of the family continued to vote in the rural town, and was a candidate for office there, and ran his farm there with hired help, he was, nevertheless, a resident during the school year of the district in which his children attended school, within the meaning of this section, providing that the common schools shall be free to all persons residing in the district. *Board of Education v. Crill* (1911), 73 Misc. 472, 133 N. Y. Supp. 494, revd. by Appellate Division. This decision is contrary to the rulings of the State Education Department.

§ 972. Persons eligible as pupils to institutions for instruction of the blind.—All blind persons of suitable age and possessing the other qualifications prescribed for deaf and dumb state pupils under section nine hundred and twenty-one shall be eligible to appointment to the institutions for the blind in the city of New York, or in the village of Batavia, as follows:

1. All such as are residents of the counties of New York, Kings, Queens, Suffolk, Nassau, Richmond, Westchester, Putnam and Rockland, shall be sent to the institution for the blind in the city of New York.

2. All such who reside in other counties of the state shall be sent to the institution for the blind in the village of Batavia. Blind babies and children, not residing in the city of New York, of the age of twelve years and under and possessing the other qualifications prescribed in the preceding section of this chapter and requiring kindergarten training and instruc-

L. 1912, chs. 60, 248.

Schools for blind.

§§ 973, 1031.

tion shall be eligible to appointment as state pupils in one of the homes for blind babies and children maintained by the International Sunshine Society, Brooklyn Home for the Blind, Crippled and Defective Children and the Catholic Institute for the Blind and any such child may be transferred to the institution for the blind in the city of New York or village of Batavia, to which he or she would otherwise be eligible to appointment, upon arriving at suitable age, in the discretion of the commissioner of education. All such appointments, with the exception of those to the institution for the blind in the village of Batavia, shall be made by the commissioner of education upon application, and in those cases in which, in his opinion, the parents or guardians of the applicants are able to bear a portion of the expense, he may impose conditions whereby some proportionate share of expense of educating and clothing such pupils shall be paid by their parents, guardians or friends, in such manner and at such times as the commissioner shall designate, which conditions he may modify from time to time, if he shall deem it expedient to do so. (*Amended by L. 1912, ch. 60, in effect Mch. 22, 1912.*)

§ 973. Support and term of instruction of state pupils.—*Subdivision 2, amended by L. 1912, ch. 60, in effect Mch. 22, 1912, and by L. 1912, ch. 223, in effect Apr. 8, 1912, as follows:*

2. The regular term of instruction of such pupils shall be five years; but the commissioner of education may, in his discretion, extend the term of any pupil for a period not exceeding three years. It shall also be lawful for the commissioner of education to continue such pupils as state pupils for an additional period of three years for the purpose of pursuing a course of study in the higher branches of learning. The number of pupils continued each year in such course shall not exceed thirty in any one institution and such pupils must be recommended by the trustees of the institution in which they are attendant, before such extension of time is granted. The pupils provided for in this section and in sections nine hundred and seventy-one and nine hundred and seventy-two of this article shall be designated state pupils; and all the existing provisions of law applicable to state pupils now in said institutions shall apply to pupils herein provided for.

Note.—The amendment made by ch. 60 provided that the term for instruction of five years should apply only to pupils "upwards of twelve years of age"; also that "the term of kindergarten training and instruction for babies and children of the age of twelve years and under received into any such institution under the provisions of section 972 of this chapter, shall be at the discretion of the commissioner of education and shall be paid for at the rate of one dollar per day." This amendment is omitted by ch. 223, and was in effect only from Mch. 22 to Apr. 8.

§ 1031. Trustees; election of trustees.—*Subdivisions 2 and 3 amended by L. 1912, ch. 248, in effect Apr. 10, 1912, as follows:*

2. The board of trustees shall elect each year three trustees, and as many more as may be necessary to fill vacancies, among members elected by them

caused by resignation or death. The alumni of said university shall meet annually in Ithaca, on the day before commencement, and at the meeting of the alumni at each annual commencement said alumni shall elect two trustees, and as many more as may be necessary to fill vacancies arising from resignations or deaths among the number previously elected by them. Except as herein otherwise provided the term of office of each elective trustee shall be five years from the annual commencement at which he is elected; but if elected by the board of trustees at a meeting thereof during the academic year, his term shall then be five years from the commencement immediately preceding his election; but every trustee shall hold over until his successor is elected or appointed as above provided.

3. The election of trustees by the board shall be by ballot, and fifteen ballots shall concur before any one is elected; and twelve shall constitute a quorum for the transaction of business. Who shall be alumni of said university shall be prescribed by its board of trustees. The election of trustees by the alumni shall be by ballot, and shall be conducted in the following manner and under the following provisions: A register of the signature and address of each of the said alumni of the said university shall be kept by the treasurer of the said university at his business office. Any ten or more alumni may file with the treasurer, on or before the first day of April in each year, written nominations of the trustees to be elected by the alumni at the next commencement. Forthwith after such first day of April a list of such candidates shall be mailed by said treasurer to each of the alumni at his address. Such list shall state the vacancies, if any, then existing in the alumni membership of the board of trustees; and the vacancies that will occur by expiration of term at the next ensuing commencement. Each alumnus may vote by transmitted ballot for trustees to be elected by the alumni at any commencement, in accordance with such regulations as to the method and time of voting as may be prescribed by the alumni and approved by the trustees of the university or its executive committee. The candidates to the extent of the number of places to be filled having the highest number of votes upon the first ballot shall be declared elected, provided that each of said candidates has received the votes of at least one-third of all the alumni voting at said election. Of the alumni trustees thus elected, the two receiving the highest number of votes shall fill the vacancies occurring by expiration of term; the others thus elected shall be allotted to fill vacancies, if any, existing otherwise than by expiration of term; the order of allotment to be in the order of the number of votes cast, the candidate receiving the highest number of votes to be allotted the longer unexpired term; but if there shall be a failure to fill all or one or more of the vacancies, caused by expiration of term or otherwise, by reason of the fact that one or more candidates having the highest number of votes as above fail to receive the votes of at least one-third of the alumni voting, then and in that event such vacancies shall be filled by the alumni personally present at said meeting, the election being

limited to candidates not elected on the first ballot, if there is a sufficient number thereof, having the highest pluralities, not exceeding two candidates for each place thus to be filled. If any vacancy occur in the alumni membership of the board of trustees, between the last day fixed herein for the filing of nominations with the university treasurer, and the time of the annual meeting of the alumni, herein provided for, then such vacancy shall not be filled for the unexpired term until the next following year, and shall then be filled by nomination and election in the manner hereinbefore prescribed for the election of alumni trustees.

§ 1094. Power to acquire real estate; proceedings therefor.—The trustees of said New York State School of Agriculture at Morrisville are hereby authorized to enter upon, take possession of and use the lands and premises known as the "Field" property, in the village of Morrisville, in the county of Madison, being a lot measuring about thirty feet by ninety-four feet, adjoining the grounds of such school and lying to the east of the buildings of such school heretofore acquired by the state from the county of Madison. An accurate survey and map of all such lands shall be made and said trustees shall annex thereto their certificate that the lands therein described have been appropriated for the use of said school. Such map, survey and certificate shall be filed in the office of the county clerk of the county of Madison. The said trustees shall thereupon cause to be served upon the reputed owner or owners of any real property so appropriated, and upon the actual occupant or occupants thereof, if any, a notice of the filing and of the date of filing of such map, survey and certificate in the office of the county clerk, which notice shall also specifically describe the portion of such real property belonging to the owner or owners which has been so appropriated, if less than the entire estate therein is to be taken. The trustees may, and if the owner or owners of such property or any of them shall be non-residents of the state, or unknown, or if the notice cannot for any reason be personally served upon the owners or all owners within the state, the trustees shall serve the same by publication thereof, once in each week for four consecutive weeks in any newspaper published in the county of Madison. From the time the service of such notice is complete, the entry upon and the appropriation by the State School of Agriculture at Morrisville of the real property therein described for the uses and purposes of said school shall be deemed complete, and such notice, when personally served or published, or both, in substantial compliance with the provisions of this section, shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the lands appropriated. The trustees of the school shall cause a duplicate copy of such notice, with an affidavit of due service or publication thereof, or both, as the case may be, to be recorded in the books used for recording deeds in the office of the county clerk of Madison county, and the record of such notice and such proofs of service or publication shall be prima facie evidence of the due service

§§ 1095, 1097, 1098.

Retirement of teachers.

L. 1912, ch. 27.

or publication thereof. The failure or neglect to serve personally on any person shall not impair or affect the entry upon or appropriation of such property, if the notice be published. The court of claims shall have jurisdiction to determine the amount of compensation for lands, structures and waters so appropriated. (*Added by L. 1912, ch. 27, in effect Mch. 7, 1912.*)

§ 1095. Retirement of certain teachers in state institutions.—Every teacher in a state institution, who, for a period of ten years has been employed by the state as a teacher in any college, school, institution or teachers' institutes maintained and supported by the state and who shall have been engaged in teaching in some college, university, school, academy, institution, teachers' institutes, or in the public schools of this state or elsewhere during a period aggregating thirty years must, at his request, or may on the order of the commissioner of education, be retired from such employment. (*Added by L. 1910, ch. 441 and amended by L. 1912, ch. 293, in effect Apr. 12, 1912.*)

§ 1097. Retirement upon recommendation of governing body of institution where teacher is employed.—Upon the recommendation of a majority of the members of the board or governing body having in charge any such college, school or institution, that a member of the teaching force be retired on account of mental or physical incapacity for the performance of duty, the commissioner of education may retire such person and issue to such person the certificate set forth in section ten hundred and ninety-six of this chapter, provided such person has been employed by the state for ten years as a teacher in any college, school or institution maintained and supported by the state and has been engaged in teaching in some college, university, school, academy, or institution or in the public schools of this state or elsewhere during a period aggregating twenty years. (*Added by L. 1910, ch. 441 and amended by L. 1912, ch. 293, in effect Apr. 12, 1912.*)

§ 1098. Amount to be paid to such retired teacher.—Every person who shall be retired under the provisions of this article shall be entitled to receive from the state one-half the salary which such person was receiving at the date of such retirement, not to exceed, however, one thousand dollars per annum. In no case shall the payment to any person retired hereunder, be less than the sum of three hundred dollars. (*Added by L. 1910, ch. 441 and amended by L. 1912, ch. 293, in effect Apr. 12, 1912.*)

ARTICLE 45-A.

STATE SCHOOL OF AGRICULTURE ON LONG ISLAND.

[Article added by L. 1912, ch. 319, in effect Apr. 15, 1912.]

- Section 1185. Establishment and control.
 1186. Immediate supervision and management.
 1187. Instruction and other operations.
 1188. Establishment of an advisory board.

L. 1912, ch. 319.

School of agriculture; Long Island.

§§ 1185-1188.

§ 1185. **Establishment and control.**—There shall be established on Long Island an institution to be known as the New York State School of Agriculture on Long Island. The commissioner of education shall have the same general powers and duties in respect thereto as possessed by such commissioner concerning the schools and institutions mentioned in subdivisions two, three and four of section ninety-four of this chapter. (*Added by L. 1912, ch. 319, in effect Apr. 15, 1912.*)

§ 1186. **Immediate supervision and management.**—Such school and the school property shall be under the immediate supervision, care and management of a board of nine trustees, of whom the governor shall appoint one from each of the five boroughs of the city of New York, two from the county of Nassau and two from the county of Suffolk. They shall be so appointed that the terms of office of three trustees shall expire each year. All trustees shall serve without pay. The board shall have the power to employ, and at discretion remove, a director, teachers and such other persons as it may deem necessary to the welfare of the school; to fix the respective compensations, and to do all other things lawful and necessary to carry into effect the objects and purposes of this article; subject, however, to the general supervision of the commissioner of education. Students bona fide residents of the state shall have free tuition. All moneys received for the school, except moneys from the state treasury and donations, shall be reported and forwarded monthly to the state treasurer. (*Added by L. 1912, ch. 319, in effect Apr. 15, 1912.*)

§ 1187. **Instruction and other operations.**—Such school shall furnish instruction and training in agricultural science, manual arts and domestic science; courses for public school teachers and others; winter courses for farmers and others, and such other operations as may be approved by the trustees and the commissioner of education. The provisions of section six hundred and seven of this chapter apply to such school. (*Added by L. 1912, ch. 319, in effect Apr. 15, 1912.*)

§ 1188. **Establishment of an advisory board.**—The director of the state college of agriculture at Cornell University, the commissioner of agriculture and the director of the state agricultural experiment station, together with the commissioner of education and the president of the board of trustees of such school, shall constitute for the school an advisory board whose function shall be to render advice concerning matters of instruction and other operations of the school, particularly when so requested by the commissioner of education or by the board of trustees. (*Added by L. 1912, ch. 319, in effect Apr. 15, 1912.*)

L. 1912, ch. 319, § 2.—The governor shall appoint the members of the board of trustees of such school within thirty days after this act takes effect.

§ 3.—The board of trustees may acquire, in the name and for the benefit of the state, by gift, devise, grant or purchase, any lands situated in the counties of Nassau and Suffolk, or in either of them, suitable for the purposes of such school.

§ 1188.

School of agriculture; Long Island.

L. 1912, ch. 319.

The sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act. The sum of ten thousand dollars, or so much thereof as may be necessary, may be used for the acquisition of such school lands, and the remainder of such fifty thousand dollars for constructing and equipping a suitable school building and minor structures. The school land shall be selected and acquired, and the structures thereon erected and equipped, by the board of trustees of such school, with the advice and assistance of the state architect, the commissioner of agriculture and the commissioner of education together acting as a board. Of the amount thus appropriated, ten thousand dollars shall be available on October first, nineteen hundred and twelve, and the remaining forty thousand dollars on October first, nineteen hundred and thirteen. Such moneys shall be paid by the treasurer on the warrant of the comptroller, upon vouchers audited and approved by the board of trustees and by at least two members of such board of three state officials; but no payment shall be made on account of any land acquired unless the voucher therefor shall be accompanied with a certificate of the attorney-general approving the title and form of conveyance.

ELECTION LAW.

(L. 1909, ch. 22.)

§ 14-a. **Correction of enrollment lists.**—Any voter who has been or shall have been enrolled with the same political party for five years or upwards and who, at the time of marking an enrollment blank on any day provided in this chapter for the enrollment of voters, makes a mark in the circle beneath the emblem of a party other than the one with which he desired or intended to enroll, by inadvertence, may at any time after the completion of the enrollment in any year as provided in this chapter and prior to the ensuing first day of July, have his party affiliation changed upon the enrollment list by the custodian of primary records with whom such list is filed by striking out the name of the party with which he is thus wrongly described as being affiliated and inserting the name of the party with which he may declare that he is affiliated by making, subscribing and acknowledging before any officer authorized by law to take the acknowledgment of deeds for record in this state, and filing or causing to be filed with such custodian of primary records, a statement embodying a declaration in substantially the following form: "I,, do solemnly declare that I reside in and am a duly qualified voter of the election district of such city (assembly district, ward or town); that at one of the last preceding days for the enrollment of party voters in such election district I received an enrollment blank and made my mark in a circle under one of the party emblems thereon, but such marking was done inadvertently and indicated my enrollment with a party with which I was not then affiliated and with which I did not intend to enroll; and I therefore request that I be specially enrolled with the party. I am in general sympathy with the principles of the party. It is my intention to support generally at the next general election the nominees of such party. I have been duly and regularly enrolled with such party for at least five years prior to the enrollment at which such mistake occurred. I have not participated in any primary election or convention of any other party during such period of five years." If any of the enrollment lists for the preceding five years in the office of such custodian of primary records do not contain the name of such applicant, as an enrolled voter of the party named in the statement, the custodian of primary records shall require him to produce a transcript of so much of an enrollment list as relates to him, if any, from the office of the custodian of primary records of the city or county in which he may have been enrolled for such year or years, accompanied with proof by affidavit showing his identity with the person whose name appears in such transcript.

Upon the filing of such statement, and all other papers or certificates if required, the said custodian of primary records, if the records support

the truth of the applicant's statement, shall cause the request contained in such statement to be complied with, by changing the entry relating to the applicant in the enrollment list to conform thereto and recording in the proper column thereof the reason therefor, including a memorandum briefly describing the papers filed in support thereof. (*Added by L. 1912, ch. 52, in effect Mch. 19, 1912.*)

§ 15. Enrollment in the year nineteen hundred and eleven.

It is the duty of the Commissioners of Elections to send a second enrollment blank by mail to an elector, if they have any doubt as to whether or not one was sent as required by law, and if sent, not received, or if received, accidentally destroyed. Rept. of Atty. Genl. (1911), Vol. 2, p. 699. But a voter who has received and returned an enrollment blank, as prescribed by law, should not be given a second enrollment blank, upon his statement that he placed his mark in the wrong circle in the one returned, nor should he be given an opportunity to correct the one thus returned. Rept. of Atty. Genl. (1911), Vol. 2, p. 700.

§ 36. State committee.—The state committee shall consist of such number, and elected from such units of representation, in even numbered years as the respective parties shall provide, by rules and regulations adopted at a state convention at which state officers are nominated. Until the adoption of such rules and regulations by a party, the number of members of a state committee and the units of representation therefor, shall continue as they now exist under its present rules and regulations. If in a unit of representation no candidate for member of the state committee receive a majority of all the votes cast for such position the delegates to the state convention therefrom shall elect a state committeeman therefor.

Each member of the state committee shall be an enrolled voter of the party within the unit of representation he is elected to represent and shall hold office until his successor shall have been elected.

In a year when a president is to be elected members of the state committee shall be elected at the spring primary and shall hold office until the election of their successors in the second year thereafter.

In case of the death, declination, disqualification or removal from office of a member of the state committee or the failure to elect a member as by reason of a tie vote, the vacancy in the state committee caused thereby shall be filled by the remaining members of the state committee. The state committee of each party shall have power and authority to designate the time and place of holding the state convention of such party, and shall have authority to fill all vacancies caused by the death, declination or disqualification of any candidate who is nominated by the state convention, or if any certificate of nomination is found to be defective, or not wholly void, to make and file a new certificate with the secretary of state, such nominations to fill vacancies or the making of new certificates to cure irregularities in those formerly filed, to be done and performed in the manner provided for in section one hundred and thirty-five of this act as to vacancies in nominations for public office or curing defects in certifi-

L. 1912, ch. 4.

Political committees.

§§ 37, 39.

cates of nominations. (*Added by L. 1911, ch. 891 and amended by L. 1912, ch. 4, in effect Feb. 14, 1912.*)

Construction of primary law, see Rept. of Atty. Genl. (1911), Vol. 2, p. 677.

§ 37. Election of members of committees.—Members of the state, county, judicial, senatorial district, congressional district, assembly district, city, borough, aldermanic district and municipal court district committees shall be elected at primary elections as herein provided for.

Members of committees shall be elected at the fall primary, except that in a year when a president of the United States is to be elected members of committees shall be elected at the spring primary. Members of the county committee shall consist of such number and elected from such units of representation as the rules and regulations of the party may provide, excepting that the number of members from any unit of representation shall be not less than the number of election districts within such unit.

Where a judicial district, senatorial district, congressional district, assembly district, aldermanic district, municipal court district, city or borough is coterminous with or less than the limits of but wholly within an entire county, the members of the county committee from such judicial district, senatorial district, congressional district, assembly district, aldermanic district, municipal court district, city or borough, shall constitute the judicial district, senatorial district, congressional district, assembly district, aldermanic district, municipal court district, city or borough committee, unless otherwise provided for by the rules of the party.

If a judicial, congressional or senatorial district consist of more than one county, the judicial, congressional or senatorial district committee shall be composed of three members from each assembly district and each portion of an assembly district comprised within such judicial, congressional or senatorial district and each such assembly district or portion of an assembly district shall be entitled to at least one vote in such committee, and if the vote cast in such assembly district, or portion thereof, for the candidate of the party, for governor, at the preceding election, exceeded one thousand, to an additional vote for each one thousand votes or major portion thereof, and each member elected from an assembly district, or portion thereof, shall be entitled to cast one-third of the total vote of such assembly district or portion thereof. For the purposes of this act, the counties of Fulton and Hamilton shall be deemed to be one county. Where a city consists of more than one county the city committee shall consist of such number of members elected from such units of representation as the rules and regulations of the party may provide. (*Added by L. 1911, ch. 891 and amended by L. 1912, ch. 4, in effect Feb. 14, 1912.*)

§ 39. Review of election of committees.—The election of members to any party committee may be reviewed by summary proceedings before the supreme court or a justice thereof, as provided for in section fifty-six of this act, upon the petition of any person qualified to vote at the primary elec-

§§ 53, 55, 57, 58.

Delegates to national conventions.

L. 1912, ch. 4.

tion of the party which such committee represents. (*Added by L. 1911, ch. 891, and amended by L. 1912, ch. 4, in effect Feb. 14, 1912.*)

§ 53. **Delegates to national conventions.**—The rules and regulations of each political party may prescribe that the delegates to a national convention of that party shall be elected either at state conventions held by such party or from congressional districts, or partly by state conventions and partly from congressional districts. In case such rules and regulations provide for the election of delegates and alternates to the national convention from congressional districts the enrolled electors of such party in the several congressional districts shall elect such delegates and alternates at the spring primary in the year when such national convention is to be held. In case such rules and regulations provide for the election of delegates and alternates to a national convention by a state convention the delegates and alternates to such state convention shall be elected at the spring primary in the year when the national convention is to be held.

The spring primary shall be subject to all the provisions of this chapter for the conduct of primary elections on the annual primary day. (*Added by L. 1911, ch. 891, and amended by L. 1912, ch. 4, in effect Feb. 14, 1912.*)

§ 55. **Existing committees continued.**—Party committees now existing shall continue until their successors are elected as provided for in this act, and shall have the power to make designations for the spring primaries in the year nineteen hundred and twelve; but if there be no such committee for a district in and for which designation of candidates for public office and party positions for such primary may be made a committee designation may be made as shall have been provided by the state committee of the party, by resolution, of which a certified copy shall be filed in the office of the secretary of state. (*Added by L. 1911, ch. 891, and amended by L. 1912, ch. 4, in effect Feb. 14, 1912.*)

§ 57. **Emblems.**

Constitutionality.—The provision of this section that “the party emblem shall constitute the committee emblem of the party” is not an abuse of the legislative power. *Matter of Hopper v. Britt* (1912), 204 N. Y. 524.

§ 58. **Official primary ballot.**

Constitutionality.—That part of this section which provides that “the name of a candidate shall not appear more than once on the ballot as a candidate for the same public office or party position” is an unreasonable restriction upon freedom in voting and a violation of the fundamental law. *Matter of Hopper v. Britt* (1912), 204 N. Y. 524.

Order of printing names of candidates for delegates and members of committees on primary ballots.—The legislature, in the enactment of this section failed to prescribe the position to be occupied on the primary ballots by names of candidates for delegates and alternate delegates to the national convention, although the statute provides for the selection of such delegates at the primary, and for an official primary ballot. It also prescribes the order of printing the names of certain

L. 1912, ch. 4.

Apportionment of delegates.

§§ 70, 94, 111, 123.

other candidates, commencing at the top of the column and proceeding to the bottom of the list. This necessarily leaves as the only place where names of delegates to the national convention can be printed, the foot of the ballot at the end of the list as fixed by the statute. *Matter of Duell v. Bd. of Elections* (1912), 205 N. Y. 79.

§ 70. Organization and conduct of official primaries.

Application of section.—See *Matter of Joslin* (1911), 73 Misc. 354, 132 N. Y. Supp. 416.

Limitation on power of court.—This section confers power to entertain summary proceedings upon the specified courts only in cases of erroneous action on the part of the public officials therein specified. It does not give power to the courts to correct mistakes made by the elector himself. *Matter of Jackson v. Britt* (1911), 147 App. Div. 87, 131 N. Y. Supp. 877.

Mandamus does not lie to compel the board of elections of the city of New York to enroll a voter in the Republican party where through his own mistake he unintentionally placed his mark in the Democratic circle on the enrollment blank. *Matter of Jackson v. Britt* (1911), 147 App. Div. 87, 131 N. Y. Supp. 877.

§ 94. Perjury.

Application.—Article 4 of the Election Law relating to enrollments in various towns of the State has no application to enrollments made in the city of New York. *Matter of Jackson v. Britt* (1911), 147 App. Div. 87, 131 N. Y. Supp. 877.

§ 111. Apportionment of delegates.—*Subdivision 2, amended by L. 1912, ch. 4, in effect Feb. 14, 1912, as follows:*

2. Except as otherwise provided in this chapter, delegates and alternates to party conventions shall be elected at official primaries. Delegates to a state convention held to nominate candidates for public offices to be voted for at a general election in an even numbered year by all of the voters of the state shall be elected at the fall primary in such year.

§ 123. Independent certificates of nomination.

Constitutionality.—The provisions of this section that "the signatures to a certificate of nomination need not all be appended to one paper" and that "no separate sheet comprising an individual certificate of nomination, where such certificate consists of more than one sheet, shall be received and filed with the custodian of primary records if five per centum of the names appearing on such sheet are fraudulent or forged, is not unconstitutional because individual nominators are not constrained to subject themselves to its operation. They may all sign a single sheet or each may sign a sheet by himself. *Matter of Burke v. Terry* (1911), 203 N. Y. 293.

Who qualified to sign certificate.—An elector to be qualified to sign a certificate of independent nomination need not have been registered at the time; it is sufficient if he registers before his name is counted. *People ex rel. Steinert v. Britt* (1911), 146 App. Div. 683, 131 N. Y. Supp. 455.

Fraudulent and forged signatures.—Where five per cent. of the names of the subscribers appearing upon a given sheet are fraudulent and forged, such sheet shall not be considered a valid part of the nominating certificate notwithstanding that the remaining signatures thereon are genuine. *Matter of Terry* (1911), 146 App. Div. 520, 521, 131 N. Y. Supp. 841, *affd.* 203 N. Y. 293.

Evidence of signature by electors.—Although section 123 provides that an affidavit by an elector that he did not sign the sheet shall be "*prima facie* evidence"

§§ 128, 135, 153, 159, 161, 190.

Boards of election.

L. 1912, ch. 406.

that he did not do so, the same effect is to be given to each form of expression. Both the notarial certificate and the affidavit are *prima facie*, not conclusive, evidence of the fact of signature which, when questioned, is to be determined by the court. *Matter of Terry* (1911), 146 App. Div. 520, 521, 131 N. Y. Supp. 841, *affd.* 203 N. Y. 293.

§ 128. Times of filing certificates of nomination.

Filing of certificates, where the last day occurs on Sunday must be made on the Saturday before. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 647.

Mandamus will not issue to compel the acceptance and filing of certificates of nomination, if they are not tendered for filing twenty days before the election, as required by this section. *People ex rel. Steinert v. Britt* (1911), 146 App. Div. 684, 131 N. Y. Supp. 455.

§ 135. Filling vacancies in nominations.

Where a party nominee has duly declined the nomination and filed a certificate to that effect with the board of elections as required by the statute, two of a committee of three appointed by the convention pursuant to this section are entitled to nominate a person in his place by filing a new certificate. *Matter of Kirk v. Gallagher* (1911), 146 App. Div. 685, 131 N. Y. Supp. 594.

§ 153. Adding and erasing names on register.

Personal appearance before the board of registration of the electors who voted at the last preceding general election in a rural town is not required for their registration, but it is the duty of the board to place their names on the register; and the board will be directed to do so where, being uncertain as to its duty, the members thereof apply to the court for an order directing them in reference thereto. *Matter of Randall* (1911), 73 Misc. 539, 132 N. Y. Supp. 457.

§ 159. Registration elsewhere.

Amendment of 1911 is unconstitutional. *Fraser v. Brown* (1911), 203 N. Y. 136; *Matter of Danniels* (1911), 74 Misc. 485, 132 N. Y. Supp. 303.

Duty of inspectors to act independently of formal application.—Under the provision of this section that at the first meeting for registration in any district where only two meetings are held the board of election inspectors shall place upon the registry the names of all voters at the last election and the names of all persons then entitled to vote, it is the duty of the inspectors to act independently of any formal application by a voter and to register his name; and their failure so to do cannot prejudice his rights but an order may be granted compelling them to do so. *Matter of Daniels* (1911), 74 Misc. 485, 132 N. Y. Supp. 303.

§ 161. Registration for other than general elections.

Registration is not required as a prerequisite for voting at a special town meeting held pursuant to an order of a court or judge for the re-submission of questions under section 13 of the Liquor Tax Law. *Rept. of Atty. Genl.*, Feb. 8, 1912.

§ 190. Boards of elections established.—There shall be a board of elections in every city of the first class in this state which does, or shall, contain within its boundaries one or more counties, to consist of four persons. There shall be a board of elections in each of the other counties of the state, but in counties having a population of less than one hundred thousand inhabitants such board shall consist of two persons. In other counties of the state such board shall consist of two or four members as the

L. 1912, ch. 406.

Boards of elections.

§§ 193, 194, 197.

board of supervisors of the county may by resolution determine. Not more than two of such commissioners, if the board of elections shall consist of four members, and not more than one of such commissioners if said board shall consist of two members, shall belong to the same political party or be of the same political opinion on state or national politics. The persons composing such boards of elections shall be designated "commissioners of elections." Each of the said boards of elections shall be and is hereby charged with the duty of executing the laws relating to all elections held within their respective cities or counties, except as otherwise provided by law. (*Amended by L. 1911, chs. 649 and 740, and L. 1912, ch. 406, in effect Apr. 16, 1912.*)

L. 1912, ch. 406, § 4.—In any county in which the number of the commissioners constituting the board of elections is reduced by the provisions of this act, the board of supervisors shall, within thirty days after this act takes effect, designate the two members of such board of opposite political faith who shall retire therefrom. Upon the adoption of a resolution to that effect, the terms of office of such retiring members shall cease and determine and the remaining members shall thereafter constitute, until the expiration of their terms, the board of elections of such county.

The purpose of sections 190-196 of the Election Law is to provide for a bipartisan election board in New York City, and the mayor is given full authority to appoint the board. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, 129 N. Y. Supp. 280.

§ 193. **Salaries of commissioners of elections.**—The salary of each commissioner of elections in the city of New York shall be five thousand dollars a year, payable in equal monthly installments. The salaries of all other commissioners of elections shall be fixed by the board of supervisors appointing said commissioners and may be changed from time to time by resolution of the said board of supervisors; provided, however, that in any county having less than one hundred thousand inhabitants the salary of each commissioner shall not exceed twelve hundred dollars annually. (*Amended by L. 1911, ch. 649, and L. 1912, ch. 406, in effect Apr. 16, 1912.*)

§ 194. **Recommendations for appointment of commissioners of elections.**

The purpose of section 194 is to make provision for pointing out to the mayor persons who are eligible so that there may be no pretext for violating the bipartisan plan of the statute. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, 129 N. Y. Supp. 280.

The power given to the mayor by section 193 to "appoint four persons as commissioners," each of whom shall be a resident and qualified voter of New York City and not more than two of whom shall be of the same political opinion, is not curtailed in any way by this section providing that the respective chairmen of the county committees of New York and Kings counties of each of the two principal political parties shall make and file with the mayor a certificate in a stated form certifying the name of one who is recommended as a fit and proper person to be appointed commissioner. *Matter of Kane v. Gaynor* (1911), 144 App. Div. 196, 129 N. Y. Supp. 280.

§ 197. **Appointment of employees.**—Every board of elections shall have

Code Civ. Pro. § 956.

Foreign documents.

L. 1912, ch. 97.

power to fix the number, salaries, duties and rank of its chief clerks, clerks, assistant clerks and stenographers and to appoint and remove at pleasure and to fix the salaries of all employees of said board; except that in a county having a population of less than one hundred thousand the board may have one clerk only and his salary shall not exceed nine hundred dollars per annum. (*Amended by L. 1911, ch. 649, and L. 1912, ch. 406, in effect Apr. 16, 1912.*)

§ 331. Form of general ballots.

Constitutionality of amendment of 1911.—Chapter 649 of the Laws of 1911, amending this section so that although a person shall have been nominated by more than one political party for the same office his name shall be printed but once upon the ballot and in the column of the party nominating him which first appears upon the ballot, unless the candidate requires it to be printed in the column of some other party which nominated him, is unconstitutional. *Hopper v. Britt* (1911), 203 N. Y. 144, revg. 146 App. Div. 363, 131 N. Y. Supp. 135, revg. 73 Misc. 369, 132 N. Y. Supp. 730.

§ 373. Original statement of canvass.

Failure to file original statement of canvass upon application for re-submission of local option questions.—Where, upon an application under section 13 of the Liquor Tax Law for a re-submission of the four local option questions specified therein, it appears that the inspectors of election have failed to file the original statement as provided by this section of the Election Law and to seal the ballot box and return it to the proper custodian as provided by section 374 of said law, and the affidavits of the inspectors state that they have not the required information to make the original statement, their disregard of the mandatory provisions of the statute renders the submission improper, and an order will be granted for a re-submission of the question at a special town meeting. *Matter of Norton* (1912), 75 Misc. 180.

ELECTIONS.

Misconduct in relation to designating petitions; Penal L., § 760a.

EMPLOYMENT AGENCIES.

General Business L., § 261.

ERIE COUNTY.

Jurors in; See Jurors.

EVIDENCE.

Code of Civil Procedure.

§ 956. Documents from foreign countries; how authenticated.—A copy of a patent, record or other document remaining of record or on file in a public office of a foreign country, certified according to the form in use in that country, is evidence when authenticated, as follows:

L. 1912, ch. 390.

Minutes of stenographers.

Code Crim. Pro. § 221-b.

1. By the certificate under the hand and official seal of a commissioner appointed by the governor to take the proof or acknowledgment of deeds in that country, to the effect that the patent, record or document is of record or on file in the public office, and that the copy thereof is correct and certified in due form; and

2. By a certificate under the hand and official seal of the secretary of state, annexed to that of the commissioner, to the same effect as prescribed by law for the authentication of the certificate of such a commissioner, upon a conveyance to be recorded within the state. The certificate of the commissioner, thus authenticated, is presumptive evidence that the copy of the patent, record or document is certified according to the form in use in the foreign country; or

3. By a certificate under the hand and official seal of a consular officer of the United States to the effect that the patent, record or document is of record or on file in the public office and certified according to the form in use in the foreign country, and a copy of a patent, record or other document so authenticated is presumptive evidence that the same is certified according to the form in use in the foreign country. (*Amended by L. 1912, ch. 97, in effect Apr. 3, 1912.*)

EXAMINATIONS.

Code of Criminal Procedure.

§ 221-b. Taking of examination, depositions and statements by official stenographer.—Upon any examination provided for in this chapter, by or before any police justice or magistrate by whom an official stenographer shall have been appointed, under provision of law therefor, stenographic minutes of the proceedings and of the examination, depositions of witnesses and statement of the defendant, if any, shall be taken by such stenographer, and such minutes, when so taken and when certified by the stenographer and by the justice or magistrate who held such examination, shall be regarded as actually taken down in writing by said justice or magistrate and subscribed by the witness or witnesses at such examination and by the defendant, and as fully complying with the requirements of this chapter in reference to the taking and subscribing of such examination, depositions and statement. (*Added by L. 1912, ch. 390, in effect Apr. 15, 1912.*)

EXECUTIVE LAW.

(L. 1909, ch. 23.)

§ 82. Publication at Albany of certain public notices.

Payment for publication of the laws of the State in the State Paper, as required by this section should be at the rate of seventy-five cents per folio. Rept. of Atty. Genl., Feb. 21, 1912.

Code Civ. Pro. §§ 2717, 2728.

Sale; settlement.

L. 1912, chs. 230, 341.

§ 90. Appointment of state historian.

Sale of publications, prepared and issued by the State Historian in his official capacity, see Rept. of Atty. Genl. (1911), Vol. 2, p. 584.

EXECUTORS AND ADMINISTRATORS.**Code of Civil Procedure.**

§ 2717. Sale of personal property.—If an executor or administrator discover that the debts against any deceased person or the legacies bequeathed by him cannot be paid and satisfied without a sale of the personal property of the deceased, the same, so far as may be necessary for the payment of such debts or legacies, must be sold. An administrator may sell the personal property of the intestate at any time when it is necessary to do so for the purpose of distribution. The sale may be public or private, and, except in the city of New York, may be on credit not exceeding one year, with approved security. The executor or administrator is not responsible for any loss happening on the sale when made in good faith and with ordinary prudence. Articles not necessary for the support and subsistence of the family of the deceased, or not specifically bequeathed, must be first sold, and articles so bequeathed must not be sold until the residue of the personal estate has been applied to the payment of debts. (*Amended by L. 1912, ch. 341, in effect Sept. 1, 1912.*)

§ 2728. Executors, et cetera, may petition for judicial settlement; citation thereupon.—In either of the following cases an executor or administrator may present to the surrogate's court his account and a written petition duly verified, praying that his account may be judicially settled; and that the sureties in his official bond or the legal representatives of such surety and all creditors or persons claiming to be creditors of the decedent, except such, as by vouchers annexed to the account filed, appear to have been paid, and the decedent's husband or wife, next of kin and legatees, if any; or, if either of those persons had died, his executor or administrator, if any, and the attorney-general in a case where decedent died intestate as to any part of his estate, leaving no known heirs or next of kin, shall be cited to attend the settlement; but where the decedent leaves a will which has been duly admitted to probate, it shall not be necessary to cite the decedent's next of kin, unless they are also legatees. (*Amended by L. 1912, ch. 230, in effect Apr. 9, 1912.*)

FACTORIES.

Regulations respecting; Labor L., §§ 69-95.

FARM NAMES.

L. 1912, ch. 145.—An act to provide for recording of farm names. (*In effect Apr. 4, 1912.*)

L. 1912, ch. 145.

Farm names.

§§ 1-4.

§ 1. **Recording.**—Any owner of a farm in the state of New York may have the name of his farm, together with a description of the lands to which said name applies recorded in a register kept for that purpose in the office of the county clerk of the county in which said farm is located, and such recorder shall furnish to such landowner a proper certificate setting forth said name and a description of such lands. When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county.

§ 2. **Fee.**—Any person having the name of his farm recorded as provided in this act shall first pay to the county clerk a fee of one dollar.

§ 3. **Effect of transfer of farm.**—When any owner of a farm, the name of which has been recorded as provided in this act, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance.

§ 4. **Cancellation.**—When any owner of a registered farm desires to cancel the registered name thereof, such owner shall state on the margin of the record of such name in such clerk's office the following, or the same in substance: "This name is canceled and I hereby release all rights thereunder," which shall be signed by the person canceling such name and attested by the county clerk. For such latter service the county clerk shall charge a fee of twenty-five cents. Or, such owner may cancel the same by recording in the county clerk's office where such original record is, a paper duly signed and acknowledged as a satisfaction of a mortgage of real property, referring to such original record of name, and directing the clerk to cancel the same; for recording such paper the clerk shall be entitled to the same fee as for recording a satisfaction of mortgage of real property.

FEEDING STUFFS.

Commercial, defined; Agricultural L., § 160.

FIRE MARSHAL.

State fire marshal; Insurance L., §§ 350-375.

FOOD COMMISSION.

L. 1911, ch. 787, § 3.—Such commission shall inquire into all questions relating to the prices paid in the State of New York for food and food stuffs, milk, butter, eggs, cheese and other farm and dairy produce, the purity of the same and the establishment of standards of food quality, correct labeling and honest weights and measures, also into the production, distribution and consumption of such food and food stuffs, farm and dairy produce, the relations with respect thereto of the distributor and middleman to the producer and consumer, with a

Sections repealed.

L. 1912, chs. 318, 344.

view to devising and recommending permanent ways and means of insuring its purity and honest and equitable sale. Said commission shall submit a report including such recommendations by bill or otherwise, as in its judgment may seem proper, to the legislature of nineteen hundred and twelve, and if it shall not be practicable to report finally thereto, the said commission shall submit its final report to the legislature of nineteen hundred and thirteen. (*Amended by L. 1912, ch. 177, in effect Apr. 4, 1912.*)

Note.—Section 2, L. 1912, ch. 177, appropriates \$10,000.

FOREST, FISH AND GAME LAW.

(L. 1909, ch. 24.)

Note.—All of this chapter, not heretofore repealed is repealed by L. 1912, ch. 318, 344, and revised, amended and reenacted as articles 4 and 5 of the Conservation Law, which see.

§ 1. Short title. Repealed by L. 1912, chs. 318, 444, in effect Apr. 15, 1912.

§ 2. Forest, fish and game commission. Repealed by L. 1912, chs. 318, 444, in effect Apr. 15, 1912.

§ 3. Fish culturist. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§ 4. Office and clerical force. Repealed by L. 1912, chs. 318, 444, in effect Apr. 15, 1912.

§§ 5, 6. Duties and powers of commissioner. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§ 7. Report to legislature. Repealed by L. 1912, chs. 318, 444, in effect Apr. 15, 1912.

§ 8. Compilation and digest. Repealed by L. 1912, chs. 318, 444, in effect Apr. 15, 1912.

§§ 11-18. Game Protectors. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 19-27. Prosecutions. Repealed by L. 1912, ch. 444, in effect Apr. 16, 1912.

§§ 28-33. Private Parks. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 34-75b. Forests and public parks. Repealed by L. 1912, ch. 444, in effect Apr. 16, 1912.

§§ 76-112. Quadrupeds; birds; fish. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 114-135. Fish. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 136-140. Fish. Repealed by L. 1912, ch. 444, in effect Apr. 16, 1912.

§§ 141-186, 189-194. Fish. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 205, 206, 209. Marine fisheries. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 216-223. Marine fisheries. Repealed by L. 1912, ch. 444, in effect Apr. 16, 1912.

§ 225. Licenses for vessels. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

§§ 240-244. Definitions and construction. Repealed by L. 1912, ch. 318, in effect Apr. 15, 1912.

FOREST LANDS.

Acquisition and development by municipalities; General Municipal L., § 72a.

FORESTRY.

State College at Syracuse.

L. 1911, ch. 851, §§ 3, 6 (B. C. & G.'s Consol. L., Vol. 8, p. 334) amended by L. 1912, ch. 15, in effect Mch. 6, 1912, as follows:

L. 1912, ch. 15.

State college at Syracuse.

§§ 3, 6.

§ 3. **Management and control of college.**—The care, management and control of such college and the property and premises required therefor shall be exercised by a board of twelve trustees. The chairman of the state conservation commission, the state commissioner of education and the chancellor of Syracuse University, shall be ex-officio members of the board of trustees. Of the remaining nine members of the board of trustees, three shall be appointed by the governor, by and with the advice and consent of the senate, and six by the board of trustees of Syracuse University. The members appointed by the governor and by the board of trustees of Syracuse University shall be divided into three classes, so that the terms of one-third thereof shall expire on June thirtieth, nineteen hundred and twelve, and one-third thereof on the thirtieth day of June of each second year thereafter. Successors to such trustees shall be appointed by the governor and by the board of trustees of Syracuse University for full terms of six years. In case of any vacancy in the office of any appointive trustee his successor shall be appointed for the unexpired term for which he was appointed. The members of the board of trustees shall serve without compensation, but shall be entitled to their actual necessary expenses incurred in the performance of their duties. (*Amended by L. 1912, ch. 15, in effect Mch. 6, 1912.*)

§ 6. **Admission to college; disposition of fees and income.**—Students who are bona fide residents of the state of New York for one year preceding the date of admission shall be entitled to free tuition in such college. Any moneys received from tuition paid by students not residents of the state of New York and from the sale of products shall be reported and forwarded monthly to the state treasurer, as required by the state finance law, and may be appropriated toward the maintenance of such college of forestry. (*Amended by L. 1912, ch. 15, in effect Mch. 6, 1912.*)

FORGERY.

In third degree; Penal L., § 889.

SUP. III—13

§§ 9, 11, 16, 16-a, 17.

Sale by weight; containers.

L. 1912, ch. 81.

GENERAL BUSINESS LAW.

(L. 1909, ch. 25.)

§ 9. Barrels of apples, quinces, pears and potatoes.—(*Repealed by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 11. Duties of state superintendent of weights and measures.

Authority of State Superintendent to enforce performance of duty by county and city sealers.—The scheme of the statute is that the county and city sealers shall enforce the observation by individuals of the standards of weights and measures, and that the State Superintendent shall enforce the performance of this duty by the county sealers and city sealers. While there is no express provision of law as to the manner in which the State Superintendent shall enforce the performance of their statutory duty by the county and city sealers, yet his general powers of supervision over them and over the standards of the State are sufficient to support his authority to direct them in the performance of their duties and to insist that the mandates of the statute be observed. Rept. of Atty. Gen. (1911), Vol. 2, p. 661.

§ 16. Method of sale of certain commodities.—All meat, meat products and butter, shall be sold or offered for sale by weight. All other commodities not in containers shall be sold or offered for sale by standard weight, standard measure or *or offered for sale by standard weight, standard measure or numerical count; and such weight, measure or count shall be marked on a label or a tag attached thereto; provided, however, that vegetables may be sold by the head or bunch. (*Added by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 16-a. Certain sizes of containers when used for vegetables, produce and fruit prescribed.—No person shall manufacture, sell, offer or expose for sale containers for vegetables, produce or fruit that are not of the capacity of one barrel, half-barrel, one bushel, or multiples of the barrel or sub-multiples of the bushel divisible by two; provided, however, that fruits, vegetables and produce may be sold in other sized containers if the net capacity in terms of standard dry measure, is plainly and conspicuously marked, branded or otherwise indicated in the English language on the outside or top thereof, or is marked in accordance with the provisions of section seventeen. A barrel within the meaning of this and the ensuing sections of this article shall represent a quantity equal to seventy hundred and fifty-six cubic inches or conform to the following dimensions: Head diameter, seventeen and one-eighth inches; length of stave, twenty-eight and one-half inches; bilge not less than sixty-four inches outside measurement; distance between heads not less than twenty-six inches; and to be known as a standard barrel. A reasonable variation of the capacity specified shall be allowed. (*Added by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 17. Net contents of containers to be indicated on the outside thereof.—When commodities are sold or offered for sale in containers of other sizes

* Line repeated in original.

L. 1912, ch. 81.

Containers for certain produce.

§§ 17-a-18.

than those specified in section sixteen-a or whose sizes are not otherwise provided by statute, the net quantity of the contents of each container, or a statement that the specified weight includes the container, the weight of which shall be marked, shall be plainly and conspicuously marked, branded or otherwise indicated on the outside or top thereof or on a label or a tag attached thereto, in terms of weight, measure or numerical count; provided, however, that reasonable variations shall be permitted. (*Added by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 17-a. When sections sixteen, sixteen-a and seventeen shall not apply.—Sections sixteen, sixteen-a and seventeen shall not apply to containers or commodities in containers with ornamentations or decorations exclusively for gifts or social favors, or to commodities dispensed for consumption on the premises, or to commodities or containers put in receptacles used merely for the purpose of carrying or delivering of commodities or containers complying with the provisions of such sections, or when the numerical count of the individual units is six or less, or in the case of liquids when the contents is two fluid ounces or less, or when the weight of the contents is three avoirdupois ounces or less, or to commodities packed, put up or filled prior to eight months after this section takes effect or to bottles used for the purpose of the bottling of spirituous, maltous, vinous, or carbonated beverages until eight months after this section takes effect. (*Added by L. 1912, ch. 81, in effect June 1, 1913.*)

§ 17-b. Guaranty furnished by wholesaler, jobber or manufacturer.—No person shall be prosecuted under the provisions of this article, following section fifteen thereof, when he can show a guaranty signed by a wholesaler, jobber or manufacturer, residing in the state of New York from whom he purchased the commodity in containers to the effect that they were not incorrectly marked within the meaning of such sections of this article. The person making the sale and guaranty shall then be amenable to the prosecution, fines, and other penalties which would in due course attach to the dealer under the provisions of such sections. The name appearing on the container and the marking as provided by section seventeen shall be deemed to constitute a guaranty. (*Added by L. 1912, ch. 81, in effect June 1, 1912.*)

§ 17-c. Definition of terms "container" and "person."—"A container" as used in this article, following section fifteen thereof, shall include any carton, box, crate, barrel, half-barrel, hamper, keg, drum, jug, jar, crock, bottle, bag, basket, pail, can, wrapper, parcel or package. "A person" as used in such sections shall be considered to import both the singular and the plural and shall include corporations, companies, societies and associations, and whether acting through an agent or servant. (*Added by L. 1912, ch. 81, in effect June 1, 1912.*)

§ 18. Examination and prosecution.—The examination of the weight,

measure or numerical count of the contents of containers as provided by section seventeen shall be made by the state superintendent of weights and measures or under his supervision or direction by any of the weights and measures officials of the state; except that in the city of New York such examination shall be made by the commissioner of the mayor's bureau of weights and measures of the city of New York. When after such examination there is cause to believe that a provision of section seventeen has been intentionally violated the state superintendent of weights and measures shall, after notifying in writing the person so accused of such accusation, certify the results to the attorney-general with a copy of the results of the examination duly authenticated under oath by the official making examination. The attorney-general shall cause appropriate proceedings in the name of the people of the state of New York to be commenced and prosecuted in the proper courts of the state without delay for the enforcement of the penalties therefor; except that in the city of New York the commissioner of the mayor's bureau of weights and measures shall in cases where he acts, after notifying in writing the person so accused of such accusation certify the result to the attorney-general, with a copy of the result of the examination duly authenticated under oath by the official making such accusation. Such attorney-general shall cause appropriate proceedings in the name of the people of the state of New York to be commenced and prosecuted in the courts of the state of New York without delay for the enforcement of the penalties therefor. The state superintendent of weights and measures with the co-operation of the chief or principal weights and measures officials of the cities of the first class shall establish uniform tolerances or amounts of reasonable variation and shall make uniform rules and regulations for carrying out the provisions of sections sixteen, sixteen-a, seventeen, seventeen-a and seventeen-b. (*Added by L. 1912, ch. 81, in effect June 1, 1912.*)

§ 18-a. Penalties.—A person violating any of the provisions of sections sixteen, sixteen-a, seventeen, seventeen-b, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for the first and second violations, and by a fine of not less than one hundred dollars nor more than five hundred dollars for subsequent violations. (*Added by L. 1912, ch. 81, in effect June 1, 1912.*)

§ 25. Licenses, bonds and deposits.

Authority of Comptroller to surrender bond as to excess.—Although it appears in a given case that the bond filed and securities deposited with the Comptroller pursuant to the provisions of the Private Banking Law are in amount and value in excess of that required by said law as amended by chapter 393, Laws of 1911, as a condition precedent to the granting of such license, the Comptroller should not undertake to surrender either the bond or securities to the extent of such excess unless ordered so to do by a court of competent jurisdiction. Rept. of Atty. Genl. (1911), Vol. 2, p. 628.

L. 1912, ch. 261.

Employment agencies.

§§ 27, 29-a, 29-d, 191.

§ 27. Penalties for conducting business without license, et cetera.

Application.—The provisions of the Private Banking Law, as amended by chap. 393, Laws of 1911, operate, with the exceptions expressly provided for in section 29-d, to prohibit the use by any and all unlicensed individuals or partnerships of the words "banking," "banker" or other equivalent terms, in connection with the transaction of their ordinary business. This prohibition extends to persons engaged solely in the business of discounting negotiable paper. Rept. of Atty. Genl. (1911), Vol. 2, p. 618.

§ 29-a. Discharge and renewal of bonds, substitution of securities, et cetera.

Application.—The Comptroller has not power to consent to the cancellation of the license issued to a private banker and the transfer of the securities deposited to a person who has purchased the business of the said banker. Rept. of Atty. Genl., Jan. 9, 1912.

§ 29-d. Exceptions.

Subd. 3.—Where the stockholders of an "express company," so-called, organized for the sole purpose of taking advantage of the provisions of subdivision 3 of this section, exempting from the operation of the Private Banking Law any "express company or telegraph company receiving money for transmission," apply to the Comptroller for a license to engage in business as private bankers, he may, as a condition precedent to granting such license, require proof of the dissolution of the corporation. Rept. of Atty. Genl. (1911), Vol. 2, p. 626.

Subd. 5.—The Comptroller may, on the filing with him of a bond, pursuant to subdivision 5 of this section, surrender and deliver up to the licensee the bonds and securities previously filed and deposited pursuant to the provisions of section 25; provided, however, that no such bond shall be released from any act or default of the principal prior to the surrender thereof. Such bond can only be released from subsequent defaults. Rept. of Atty. Genl. (1911), Vol. 2, p. 610.

§ 191. Employment agencies; enforcement of article.—Subdivision 3, amended by L. 1912, ch. 261, in effect Apr. 11, 1912, as follows:

3. Complaints against any such licensed person shall be made orally or in writing to the mayor or commissioner of licenses, or be sent in an affidavit form without appearing in person, and reasonable notice thereof, not less than one day, shall be given in writing to said licensed person by serving upon the licensed person either personally or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and a hearing pursuant to the powers granted to the mayor or commissioner of licenses as provided in section one hundred and seventy-four shall be had before the mayor or commissioner of licenses within one week from the date of the filing of the complaint and no adjournment shall be taken for a period longer than one week. A daily calendar of all hearings shall be kept by the mayor or commissioner of licenses and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The mayor or commissioner of licenses shall render his decision within eight days from the time the matter is finally submitted to him. Said mayor or commissioner of licenses shall keep a record of all such complaints and hearings. The

§§ 200, 203, 371.

Usury forbidden.

said mayor or commissioner of licenses may refuse to issue and shall revoke any license for any good cause shown, within the meaning and purpose of this article and when it is shown to the satisfaction of the mayor or commissioner of licenses that any licensed person is guilty of any immoral, fraudulent or illegal conduct in connection with the conduct of said business, it shall be the duty of the mayor or the commissioner of licenses to revoke the license of such person; but notice of the charges shall be presented and reasonable opportunity shall be given said licensed person to defend himself. Whenever said mayor or commissioner of licenses shall refuse to issue or shall revoke the license of an employment agency, said determination may be reviewed by certiorari. Whenever for any cause such license is revoked, said mayor or commissioner of licenses shall not within three years from the date of such revocation issue another license to said licensed person or his representative or to any person with whom he is to be associated in the business of furnishing employment, help or engagements. In the absence of the commissioner of licenses, the deputy commissioner of licenses may conduct hearings and act upon applications for licenses, and revoke such licenses. (*Subd. amended by L. 1912, ch. 261, in effect Apr. 11, 1912.*)

§ 200. Safes; limited liability.

The recovery of a guest for the loss of property delivered to the innkeeper is not limited to said sum of \$200, where she bases her action, not upon his liability as an innkeeper, but upon his affirmative negligence in failing to take proper care of the property after he had removed it from his safe during a fire. *Hyman v. South Coast Hotel Co.* (1911), 146 App. Div. 341, 130 N. Y. Supp. 766.

§ 203. Value of animals.

Liability for loss of horse.—Where one makes a contract with an innkeeper to stable and care for his horse, but does not become or intend to become a guest, the innkeeper is not liable as such for the loss of the horse. *Tillhurst v. Beinbrink* (1911), 72 Misc. 365, 375, 129 N. Y. Supp. 838.

§ 371. Usury forbidden.

Application to private bankers.—The statutes relating to usury do not apply to discounts or loans made by private bankers. *Matter of Thornburgh* (1911), 72 Misc. 619, 132 N. Y. Supp. 268.

Contract in foreign State through agent.—A State may limit the extent to which it will permit its citizens to be imposed upon in the matter of interest, but if its citizens will, either personally or through agents, go outside the State and obtain loans at excessive interest, it is not the duty of the courts to relieve them from their liability. Thus a resident of this State may authorize an agent in the State of Maine, where there is no limit upon the rate of interest to be charged on loans, to execute a note in his name in that State and the note so made is a valid obligation, although, if executed in this State, it would be void for usury. *Thompson v. Erie Railroad Co.* (1911), 147 App. Div. 8, 131 N. Y. Supp. 627.

Usurious note.—Where a note, usurious in its inception, passes into the hands of a *bona fide* holder for value, and the maker makes a payment thereon and takes it up and gives a new note for the balance due in place thereof, the latter note is valid. *Armstrong v. Middaugh* (1911), 74 Misc. 45, 133 N. Y. Supp. 647.

Parol evidence of usury.—The written agreement made by the parties is not conclusive on the question as to whether the contract was usurious, and parol evidence may be given to show that the transaction is tainted with usury, notwithstanding the fact that the writing would indicate that it was lawful. *Von Haus v. Soule* (1911), 146 App. Div. 734, 131 N. Y. Supp. 151.

§ 374. Corporations prohibited from interposing defense of usury.

A corporation organized by executors in order to continue the business of a testator cannot plead the defense of usury. *DeMoltke-Huitfeldt v. Garner & Co.* (1911), 145 App. Div. 766, 130 N. Y. Supp. 558.

GENERAL CITY LAW.

(L. 1909, ch. 26.)

§ 45. Examinations; conducting business without certificate prohibited.

License of non-resident plumbers.—Local plumbing boards have no power to recognize the certificate of competency or registration of master or employing plumbers where granted by the authorities of another municipality. If a plumber proposes to conduct his business in more than one city, he must procure a certificate from the board of each city in which he intends so to pursue his calling. Rept. of Atty. Genl., Mch. 28, 1912.

Validity of contract by unlicensed plumber.—Where one not a duly licensed plumber pursues that business he cannot recover on a contract made by him exclusively for plumbing work, although he sublets the contract to plumbers who are duly licensed. *Wexler v. Rust* (1911), 144 App. Div. 296, 128 N. Y. Supp. 927.

GENERAL CONSTRUCTION LAW.

(L. 1909, ch. 27.)

§ 41. Quorum and majority.

Two surviving condemnation commissioners have ample power to continue the work of the commission after the death of the third member. *Lake Shore & Michigan Southern R. Co. v. Mahle* (1911), 72 Misc. 129, 129 N. Y. Supp. 288.

GENERAL CORPORATION LAW.

(L. 1909, ch. 28.)

§ 6. Corporate names.—1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state; nor shall any corporation except a religious, charitable or benevolent corporation be authorized to do business in this state unless its name has such word or words, abbreviation, affix or prefix, therein or thereto, as will clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership; or unless such corporation uses with its corporate name, in this state, such an affix or prefix. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, or a corporation acquiring or becoming possessed of all the estate, property, rights, privileges and franchises of any other corporation or corporations by merger, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state with the word “trust,” “bank,” “banking,” “insurance,” “assurance,” “indemnity,” “guarantee,” “guaranty,” “title,” “savings,” “investment,” “loan” or “benefit” as part of its name, except a corporation formed under the banking law or the insurance law.

2. No corporation, society or association, whether now existing or hereafter organized under or by virtue of the laws of this state, shall ever employ the words “Lucretia Mott” to designate, describe or name any hospital, infirmary or dispensary, or any part thereof, or any similar institution. (*Amended by L. 1911, ch. 638 and L. 1912, ch. 2, in effect Feb. 8, 1912.*)

Only corporate name to be used.—A company incorporated under the laws of this State is entitled to use only the corporate name stated in its certificate of incorporation. It may not do business under other corporate names. Rept. of Atty. Genl., Feb. 21, 1912.

The use of the word “Company” in a corporate name, not immediately preceded by the conjunction “and,” is a compliance with this section, as amended by chapter 638 of the Laws of 1911, which provides that the name of the corporation, or an affix or prefix thereto, must clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership. Rept. of Atty. Genl., Jan. 8, 1912.

The use of the word “Limited” in a corporate name is in compliance with this section, as amended by chapter 638 of the Laws of 1911, which provides that the name of the corporation, or an affix or prefix thereto, must clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership. Rept. of Atty. Genl., Feb. 7, 1912.

Certificates of authorization to a foreign corporation, the name of which is not

in conformity with this statute, should be issued permitting it to do business in this State only with an added affix or prefix conforming to the statute. Rept. of Atty. Genl., Jan. 8, 1912.

§ 10. Limitation of powers.

Unauthorized provisions in certificate of incorporation.—The Secretary of State is not required to file under the Business Corporations Law a certificate of incorporation, which contains a provision that the stockholders, both present and future, will sell and deliver to it all milk produced upon their farms from cows owned or controlled by them, with the exception of milk consumed at home and that delivered to a cheese factory located in the vicinity of said farms. Rept. of Atty. Genl. (1911), Vol. 2, p. 600.

§ 15. Certificate of authority of a foreign corporation.

Application.—The provisions of this section prohibit actions in this State by foreign stock corporations doing business here without being licensed to do so relates only to actions upon contracts made in this State. *Bremer v. Ring* (1911), 146 App. Div. 724, 131 N. Y. Supp. 487.

A foreign corporation which has obtained a certificate to do business in this State is entitled to the equal protection of our laws. *People ex rel. Browning, King & Co. v. Stover* (1911), 145 App. Div. 259, 130 N. Y. Supp. 92.

It is only when a foreign corporation "doing business in this State" in competition with domestic corporations has made a contract within this State that it is denied the aid of our courts in its enforcement, unless it has complied with the statute. *Eclipse Silk Mfg. Co. v. Hiller* (1911), 145 App. Div. 568, 129 N. Y. Supp. 879.

Doing business; what constitutes.—In an action by a foreign corporation to recover the purchase price of a soda-water fountain, it appeared that the defendant negotiated with G., who had an office in the city of New York but not maintained by the plaintiff, for the purchase of the fountain and signed an order blank addressed to the plaintiff in a foreign State requesting it to ship the fountain. The order was not signed by the plaintiff, or by any one on its behalf. G. forwarded the order together with a check in part payment of the purchase price to the plaintiff. The fountain was shipped to the defendant, who signed notes for the balance of the purchase price secured by a chattel mortgage on the fountain, which notes and mortgage, though signed in New York, were sent to the plaintiff by G., who received commissions on the sale. It was held that the plaintiff was not doing business within this State. *Acorn Brass Mfg. Co. v. Rutenberg* (1911), 147 App. Div. 533, 132 N. Y. Supp. 600.

A foreign corporation is entitled to recover the purchase price of books shipped to a resident of this State from a foreign State on an order taken by a traveling salesman who exhibited samples in this State, when the order was sent by mail to the foreign State and there accepted and the corporation had no place of business or bank account in this State. Under the circumstances it was not doing business here within the meaning of the statute. *Page & Co. v. Sherwood* (1911), 146 App. Div. 618, 131 N. Y. Supp. 322.

A single transaction by a foreign corporation in this State does not necessarily constitute doing business here; but if it be part of a general attempt to transact business in violation of the statute, the first transaction is as illegal as subsequent ones. *Mahar v. Harrington Park Villa Sites* (1911), 146 App. Div. 756, 131 N. Y. Supp. 514.

Doing business within the meaning of this section relates to the ordinary business which the corporation was organized to do. It has no relation to the incidental contract of a foreign corporation with a domestic corporation, such as

§ 15.

Certificate of authority.—

insuring its property. *Kline Brothers & Co. v. German Union Fire Ins. Co.* (1911), 147 App. Div. 790.

Penalty for failure to procure certificate.—The only penalty which is prescribed by the General Corporation Law for a disregard of this provision is contained in the same section, viz., that no such corporation “shall maintain any action in this State upon any contract made by it in this State, unless prior to the making of such contract it shall have procured such certificate.” The latter provision does not wholly invalidate a contract the only infirmity in which is the disability on the part of a foreign corporation to sue thereon in this State. It remains a valid and effective instrument in all other respects. The statute imposes only on a foreign corporation, which has not complied with these provisions, the penalty of being unable to maintain any action upon a contract made by it; such penalty is not imposed upon the other party to the contract. *Mahar v. Harrington Park Villa Sites* (1912), 204 N. Y. 231.

A complaint in an action to recover from a foreign corporation moneys paid on a contract by the plaintiff to purchase lands owned by the defendant in a foreign State, which alleges in substance that the defendant is a foreign corporation other than a moneyed corporation, has an office for the transaction of business in this State, that the transactions relating to the agreement took place in the State, and that the defendant at the time had not complied with the requirements of section 15 of the General Corporation Law, so as to entitle it to do business here, sufficiently shows on demurrer that the defendant was doing business in this State without authority. *Mahar v. Harrington Park Villa Sites* (1911), 146 App. Div. 756, 131 N. Y. Supp. 514; *revd. on other grounds*, 204 N. Y. 231.

Before the obtaining of a certificate becomes a material fact in connection with an action, two things must concur, the corporation must be a foreign stock corporation, other than a moneyed corporation, doing business in this State, and the contract which is the basis of the action must have been made within the State. If the existence of these conditions precedent appears upon the face of the complaint, then such complaint is demurrable unless it contains a further allegation that the provisions of the statute above referred to have been complied with. *Acorn Brass Mfg. Co. v. Rutenberg* (1911), 147 App. Div. 533, 132 N. Y. Supp. 600.

It is error to dismiss the complaint, before evidence is taken, in an action on a promissory note brought by a foreign corporation against a domestic corporation on the ground that there is no allegation that the plaintiff was authorized to do business in this State within the provisions of this section, although the note set forth was payable at a bank in this State, if there be no allegation of the time and place of its delivery, the consideration, or where the transaction out of which it arose took place, or that the plaintiff is doing business in this State or has any office therein. *Alpha Portland C. Co. v. Schratwieser F. C. Co.* (1911), 146 App. Div. 571, 131 N. Y. Supp. 142.

Action may be maintained in federal courts.—The contract cannot be enforced in the state courts and that is the only penalty prescribed. However, since the Court of Appeals of the state has not held such a contract void, the federal courts will enforce such a contract until such construction has been placed upon it by the state courts or the Legislature enacts a law declaring such contracts void. *Johnson v. New York Breweries Co.*, 178 Fed. 513 (1910); *New York Breweries Co., Limited, v. Johnson*, 171 Fed. 582 (1909); *Richmond Cedar Works v. Buckner*, 181 Fed. 424 (1910).

A failure to take out a license does not prohibit a foreign corporation from bringing a suit in equity in the federal courts to enjoin the use of its corporate name by a New York corporation. Nor is such a suit precluded in the state courts. *United States L. & H. Co. of Me. v. U. S. L. & H. Co. of N. Y.*, 181 Fed. 182 (1910).

§ 16. Proof to be filed before granting certificate.

Statement as to principal place of business.—The statement of a foreign corporation seeking to obtain permission to do business here that its principal place of business in this State is the city of Ogdensburg, in the county of St. Lawrence, and that the person designated upon whom process may be served within this State has an office at No. 82 Ford street, in the city of Ogdensburg, is a sufficient compliance with this section, so far as the designation by the corporation of its principal place of business within the State and the office of the person upon whom process may be served, is concerned. Rept. of Atty. Genl., Feb. 2, 1912.

§ 22. Prohibition of banking powers.

Application.—A foreign transportation corporation is prohibited by the provisions of this section from issuing, buying and selling drafts or bills of exchange or issuing evidences of debt for circulation as money. Rept. of Atty Genl. (1911), Vol. 2, p. 544. The provisions of this section, investing transatlantic steamship companies with power and authority to receive money for transmission and to transmit the same by draft, traveler's check, money order or otherwise, extend and apply to the *bona fide* agents, whether individual or corporate, of such company. If, however, it appears that the relationship of principal and agent is merely fictitious, the so-called agents are amenable to the provisions of law prohibiting the exercise of such powers. Rept. of Atty. Genl. (1911), Vol. 2, p. 621.

§ 32. Powers of supreme court respecting elections.

History of section.—See *Matter of Ringler & Co.* (1912), 204 N. Y. 30, revg. 145 App. Div. 361.

Purpose and application.—This section was clearly enacted in order that courts might have power to proceed in a summary manner to test the title of officers of corporations without recourse to the more cumbersome proceedings in a writ of *quo warranto*. The Supreme Court now has the power to inquire into any corporate election of directors or officers, whether the same is made by the stockholders or by trustees or directors to fill vacancies. *Matter of Ringler & Co.* (1912), 204 N. Y. 30, revg. 145 App. Div. 361.

See generally *Matter of N. Y. & Westchester Town Site Co.* (1911), 145 App. Div. 623, N. Y. Supp.

§ 34. Quorum of directors and powers of majority.

Aliens, as directors of trust company.—A person, not a citizen of the United States, is eligible to act as a director in a Trust Company providing at least one director of said company is a citizen of this State. Rept. of Atty. Genl., Jan. 17, 1912.

The right of the president of a corporation to represent it and speak for it is a limited one. Corporations act, and must act, by their respective boards of directors, managers or trustees, under the statute creating them. Hence a petition in bankruptcy, executed and filed by the president without the authority of the board of directors, is not sufficient. So of an assignment for benefit of creditors thus executed. In *re* *Jefferson Casket Co.*, 182 Fed. 689 (1910).

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§§ 63, 90, 102, 221, 306.

Action to dissolve.

L. 1912, ch. 204.

§ 63. Order authorizing change.

Effect of change of corporate name.—A change of corporate name, effected pursuant to the provisions of the General Corporation Law, has no effect whatever upon the existence or identity of a corporation or on any right flowing to or from it. Accordingly, the Comptroller upon receipt of proof that a corporation contracting with the State has thus effected a change in its corporate name, should make payment to it under its new name. Surety upon the bond of the contractor will not thereby be released or relieved of any liability. Rept. of Atty. Genl. (1911), Vol. 2, p. 588.

§ 90. Action against officers of corporation for misconduct.

Abatement of action.—An action by a director against his co-directors for mismanagement, etc., abates by reason of the fact that he is not re-elected to office. The action does not survive merely because the former director continues to be a stockholder nor by virtue of section 756 of the Code of Civil Procedure. *Hamilton v. Gibson* (1911), 145 App. Div. 825, 130 N. Y. Supp. 684.

§ 102. Who may bring action to dissolve a corporation.—An action specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly; and if there be no person in existence upon whom service of the summons can be made under the provisions of section four hundred and thirty-one of the code of civil procedure, service of the summons in such action may be made in such manner as the court upon application by petition may direct. (*Amended by L. 1912, ch. 204, in effect Apr. 8, 1912.*)

§ 221. Dissolution of stock corporation before expiration of time limit.

Place of meeting for the purpose of voting upon a proposition to dissolve a corporation under this section, must be in the city, town or village in which the last preceding annual meeting of the corporation was held within this State. Such annual meeting to have been legal, must necessarily have been within the boundaries of the State of New York. The meeting must be called originally for such place, and if called for an improper place cannot be legally adjourned. Rept. of Atty. Genl., Jan. 18, 1912.

Consent to dissolution.—A stock corporation can be dissolved without judicial proceedings only when the holder of two-thirds in amount of the entire outstanding stock of corporation consents thereto in writing. Rept. of Atty. Genl., Jan. 13, 1912.

§ 306. Appointment of receivers.

When receiver should be appointed.—A receiver of a corporation should not be appointed under this section on the ground that there are no officers of the corporation entitled to hold its assets merely because three of five directors have been ousted by order of the court, if the two remaining are *prima facie* qualified to act in that they are apparently duly elected and one of them, the vice-president, is given by the by-laws all the powers of the president who was ousted. *Ehret v. Ringler Co.* (1911), 144 App. Div. 480, 129 N. Y. Supp. 551.

GENERAL MUNICIPAL LAW.

(L. 1909, ch. 29.)

§ 51. Prosecution of officers for illegal acts.

This section authorizes actions only against municipal corporations and their officers, not against State officers. Hence, an action to restrain the expenditure of State moneys on highways can be brought by the people of the State alone. *County of Albany v. Hooker* (1912), 204 N. Y. 1. The only officers whose illegal acts may be restrained by an action under this section are those "acting or who have acted for on behalf of" a municipal corporation. *Matter of Reynolds* (1911), 202 N. Y. 430, 440.

A taxpayer's action is inappropriate as a remedy for correcting illegal action on the part of civil service commissioners. *Slavin v. McGuire* (1912), 205 N. Y. 84, affg. 144 App. Div. 910.

Individual taxpayers cannot maintain an action against the school commissioner of the school district in which they live and certain villages which had been created as separate school districts therein to restrain the defendant school commissioner from declaring the villages to be separate school districts, or from taking any other proceedings in that respect, on a complaint alleging that the villages had been created in pursuance of a fraudulent scheme on the part of their residents to avoid their due share of taxation for school purposes. Such a suit does not come within the scope of the taxpayers' suits provided for by this section, and there is nothing in said section to authorize such action. *Prankard v. Cooley* (1911), 147 App. Div. 145, 132 N. Y. Supp. 289.

Right of taxpayers to inspect books and records in city department.—Even under broad publicity statutes it is necessary for the individual seeking an inspection of books and papers in a city department to show that he seeks the information for some legitimate and specific purpose and the gratification of curiosity or some speculative purpose will not suffice. A taxpayer of New York City is not entitled upon demand and without showing any interest or reason therefor to examine the records of the department of health of that city. *Matter of Allen* (1911), 148 App. Div. 26.

The right to inspect books and papers filed with an officer, board or commission acting on behalf of a county, town or other municipality, which is given by the General Municipal Law (Cons. Laws, ch. 24, § 51), is as broad as the language used to bestow it and there is no limitation thereof save that found in the provision itself—making the examination subject to reasonable regulations—or in special statutes relative to the public documents in particular departments. *Matter of Egan* (1912), 205 N. Y. 147.

Section 1175 of the charter of the city of New York (L. 1901, ch. 466) is a special statute which provides that the board of health may establish as it shall deem wise and to promote the public good and public service, reasonable regulations "as to the publicity of any of the papers, files, reports, records and proceedings of the department of health." This empowers the board to determine whether any particular document falling within the prescribed category shall or shall not be made public. *Matter of Allen* (1912), 205 N. Y. 158, dist'g *Matter of Egan*, 205 N. Y. 147.

A writ of mandamus will lie to compel the commissioners of water supply of the city of New York to afford a taxpayer in that city an opportunity to inspect reports of engineers relating to the passing upon and awarding a contract under the provisions of chapter 724 of the Laws of 1905, which act authorizes the board to "select the bid or proposal the acceptance of which will in their judgment best secure the

efficient performance of the work" when such contract has been awarded to another than the lowest bidder, although the petitioner does not allege that he has suffered special injury or that he contemplates bringing a taxpayer's action. *Matter of Egan* (1912), 205 N. Y. 147, *dist'g Matter of Lord*, 167 N. Y. 398; *People ex rel. Woodill v. Fosdick*, 141 App. Div. 450.

Action against board of estimate and apportionment of New York City.—Where in a taxpayer's action, brought under this section, against the members of the board of estimate and apportionment of the city of New York to enjoin them from carrying out the terms of a resolution passed by them directing the preparation of a contract to carry out a plan for the operation by the Brooklyn Rapid Transit Company of new subways to be built by the city, it appears on a motion by plaintiff for an injunction *pendente lite* that the general subject of such a contract had been considered by a joint committee of the members of the board of estimate and of the Public Service Commission, which had reported in favor of the agreement with the Brooklyn Rapid Transit Company, but it further appears that such committee was a non-statutory body; that its report was binding upon neither the board of estimate nor the Public Service Commission, both of which were required by statute to approve any contract for the operation of the new subways, and that neither the board nor the commission had officially approved of the proposed plan, which also had not been as yet subjected to a public hearing as required by law, there is no such imminence of the execution of the contract complained of as to justify a temporary injunction to prevent its execution, or even to justify an examination as to its legality. *Admiral Realty Co. v. Gaynor* (1911), 147 App. Div. 719.

Mandamus to compel commissioners of board of water supply of New York City to allow inspection of reports relating to award of contracts.—A taxpayer in the city of New York is entitled to a peremptory writ of mandamus requiring the commissioners of the board of water supply of said city to allow an inspection of the reports of the engineers of the board relating to the award of a contract for the improvement of the water supply where they have let the contract, involving a large amount of money, to a contractor who was not the lowest bidder. This is so, although the commissioners may not have been bound to accept the lowest bidder and may be vested with discretion in letting the contract, for by virtue of section 51 of the General Municipal Law and section 1545 of the city charter the records of municipal officers are public records open to reasonable inspection. The taxpayer in order to be entitled to such inspection need not set forth fraud or improper conduct on the part of the municipal authorities although, *it seems*, it might be necessary to show such facts in a taxpayer's action. *Matter of Egan v. Board of Water Supply* (1911), 148 App. Div. 177.

§ 72-a. Acquisition and development of forest lands.—The governing board of a county, town or village may severally acquire for such county, town or village, by purchase, gift, lease or condemnation, and hold as the property of such municipality, tracts of land having forests or tree growth thereon, or suitable for the growth of trees, and may appropriate therefor the necessary moneys of the county, town or village for which the lands are acquired. Such lands shall be under the management and control of such board and shall be developed and used for the planting and rearing of trees thereon and for the cultivation thereof according to the principles of scientific forestry, for the benefit and advantage of the county, town or village. The determination of any such board to acquire lands under the provisions of this section shall be by resolution; but the question of the final adoption of such resolution shall be taken up by the board

only after public notice thereof has been published for at least two weeks, as follows: If it be a resolution of a board of supervisors, the publication shall be made in the newspapers in which the session laws and concurrent resolutions are required to be published; if it be a resolution of a town board or of a board of trustees of a village, the publication shall be made in a newspaper published in the town or village, respectively. The board shall give a hearing to all persons appearing in support of or in opposition to such proposed resolution. If it be determined to purchase such lands the moneys necessary therefor may be provided as follows: If the acquisition be by a county, the board of supervisors may cause such moneys to be raised by taxation and levied and collected as other county taxes or may borrow money therefor on the credit of the county by the issuance and sale of county bonds in the manner provided by law for the issuance and sale of other county obligations; if the acquisition be by a town, the moneys necessary therefor shall constitute a town charge and be raised by taxation as other town charges, or, the town board may in its discretion, cause town bonds to be issued and sold in the manner provided by law for the issuance and sale of town bonds, under the town law, to pay judgments; if the acquisition be by a village, the moneys therefor may be raised by taxation, as other village taxes, or by the issuance and sale of village bonds in the manner provided by the laws governing such village relating to village obligations, after the adoption of a resolution therefor by the board of trustees, without other authorization. All revenues and emoluments from lands so acquired shall belong to the municipality and be paid to its chief fiscal officer for the purposes of such municipality and in reduction of taxation therein. Such forest lands shall be subject to such rules and regulations as such governing board of the municipality shall prescribe; but the principal object to be conserved in the maintenance of such lands shall be the sale of forest products in aid of the public revenues and the protection of the water supply of the municipality. Such lands or portions thereof may be sold and conveyed, or leased, if a resolution therefor be adopted by the affirmative vote of two-thirds of all the members of such governing board; but no such resolution directing an absolute conveyance shall be effectual unless adopted after a public hearing, held upon notice given in the manner required in the case of a resolution to acquire such lands. A deed of conveyance or lease of such lands, when authorized as aforesaid, shall be executed by the county treasurer of the county, supervisor of the town or president of the village by which the conveyance or lease is made. Moneys may be appropriated for the care and maintenance of such lands and the development and use of forests thereon annually, by the county, town or village, respectively, and the amount thereof raised by taxation in the same manner that other expenditures of such county, town or village are provided for by law. (*Added by L. 1912, ch. 74, in effect Mch. 26, 1912.*)

§ 88. **Separate specifications for certain contract work.**—Every officer, board, department, commission or commissions, charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alteration of buildings in any county or city, or the borough of any city, when the entire cost of such work shall exceed one thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed:

1. Plumbing and gas fitting.
2. Steam heating, hot water and ventilating apparatus.

Such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by any county, city or borough, or a department, board, commission, or commissioner or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations. Nothing in this section shall be construed to prevent the authorities in charge of any county or municipal building from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof. (*Added by L. 1912, ch. 514, in effect Sept. 1, 1912.*)

GETTYSBURG.

L. 1912, ch. 227.—An act to provide for the celebration of the fiftieth anniversary of the battle of Gettysburg, the appointment of a commission and making an appropriation therefor. (*In effect Apr. 9, 1912.*)

§ 1. **Commission.**—The New York commission for the battlefields of Gettysburg and Chattanooga is hereby appointed a commission to plan and conduct a public celebration of the fiftieth anniversary of the battle of Gettysburg. Such commission shall have power to enter into negotiations and co-operate with the state of Pennsylvania in relation to such celebration. Such commission may also appoint committees from its members and may employ such assistants as it may deem necessary, fix their compensation and define their powers and duties within the provisions of any appropriation made therefor.

§ 2. **Contracts.**—Such commission is hereby authorized to make contracts, after the first day of January, nineteen hundred and thirteen, for the transportation of twenty-five thousand veterans of the war of the rebellion residing in this state, from points within this state, to and from Gettysburg and also to make contracts after January first, nineteen hundred and thirteen, for the transportation and subsistence to and from Gettysburg of the governor and his staff, the lieutenant-governor, the comptroller, a committee of the legislature to consist of fifteen members of the assembly, to be appointed by the speaker of the assembly, and ten

members of the senate to be appointed by the president pro tempore of the senate, and of the commission hereby appointed, the entire expenditure under the terms of such contracts shall in no event, however, exceed the sum of two hundred and sixty thousand dollars.

§ 3. **Appropriation.**—The sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated to be used by the commission hereby appointed in carrying out the provisions of this act. No part of said moneys shall be available until after the first day of January, nineteen hundred and thirteen, except the sum of five thousand dollars which shall be immediately available for the use of the said commission.

§ 4. **Payment of money; record; report.**—Moneys appropriated for the commission shall be paid by the treasurer on the warrant of the comptroller, issued upon a requisition signed by the president and secretary of the commission, accompanied by an estimate of the expenses for the payment of which the money so drawn is to be applied, and vouchers for such expenditures shall be filed with the comptroller, who shall audit the same. The commission shall keep an accurate record of all its proceedings and transactions, and shall submit to the legislature of nineteen hundred and fourteen a full and complete report thereof. Within thirty days thereafter the commission shall make a verified report to the comptroller of the disbursements made by it and return to the treasurer the unexpended balance of any money drawn in pursuance of this act. It shall have no power or authority to contract for the expenditure of any sum in excess of the amounts herein specified.

HIGHWAY LAW.

(L. 1909, ch. 30.)

§ 2. **Definitions.**—1. The term “department,” when used in this chapter, shall mean the department of highways as constituted herein.

2. The term “commission,” when so used, shall mean the state commission of highways.

3. The term “district superintendent” or “county superintendent,” when so used, shall mean the district superintendent of highways or county superintendent of highways, respectively.

4. The term “town superintendent,” when so used, shall mean the town superintendent of highways.

5. A highway within the provisions of this chapter shall be deemed to include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls and all bridges having a span of five feet or less. (*Amended by L. 1911, ch. 646 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 3. **Classification of highways.**—Highways are hereby divided into four classes.

1. State highways are those constructed or improved under this chapter at the sole expense of the state, including those highways specified and described in section one hundred and twenty of the highway law and acts amendatory thereof.

2. County highways are those heretofore or hereafter constructed or improved at the joint expense of state, county and town, or state and county, as provided by law, except those highways specified and described in section one hundred and twenty of this chapter.

3. County roads are those designated as such under a general or special law and constructed, improved, maintained and repaired by the county as such, in counties in which the county road system has been or may be adopted.

4. Town highways are those constructed, improved or maintained by the town with the aid of the state, under the provisions of this chapter, including all highways in towns, outside of incorporated villages constituting separate road districts, which do not belong to either of the two preceding classes. (*Amended by L. 1910, ch. 567 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 11. **State commission of highways; deputies, secretary, and other clerks, officers and employees.**

Supervisor may be appointed foreman of laborers in the Highway Department, the duties of the officers not being incompatible. Rept. of Atty. Genl. (1911), Vol. 2, p. 642.

§ 21. **Estimate of cost of maintenance of state and county highways.**—The commission shall annually cause to be inspected all improved state

L. 1912, ch. 83.

Defective highways.

§§ 49, 53, 74.

and county highways, either by the division engineer, or the district or county superintendent of the district or county in which such highways are situated and shall require a complete report of such inspection which shall show in detail the condition of the highway inspected, the necessary work to be performed in the repair and maintenance of such highways, and the estimated cost thereof. The commission shall revise said estimates and annually report to the legislature its estimated cost of such repair and maintenance for the ensuing year, as so revised, in detail by counties. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 49. Machinery, tools and implements.

Contract for steam roller.—Payment by the manufacturers of a steam roller of the *per diem* fees of the members of the town board for attending a meeting to authorize a contract for hiring or purchasing a steam roller and also the expenses of town officials in going to examine the roller and verify the agent's representations in respect to it is not a fraud upon the town which will vitiate the subsequent contract for the hiring or purchase of the steam roller. *Gardner v. Town of Cameron* (1911), 74 Misc. 286, 131 N. Y. Supp. 894.

A lease of a steam roller by the manufacturers to a town, at a rental to be paid out of the highway improvement fund of ten dollars per day for sixty-four days each year for five years, coupled with an agreement upon the part of the manufacturers to sell the roller to the town for one dollar at the end of that period is a violation of this section, prohibiting the purchase of a steam roller for more than five hundred dollars without a vote of a town meeting, and also of section 50 which limits the hiring of a steam roller for rent payable out of the highway improvement fund to the days such roller is actually used on the highways. *Gardner v. Town of Cameron* (1911), 74 Misc. 286, 131 N. Y. Supp. 894.

§ 53. Removal of obstructions from ditches, etc.—(*Repealed by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 74. Liability of town for defective highways.

Liability of town for negligence of superintendent.—A town is not liable for injuries caused by defective highways in the absence of statutory provision therefor. Under the statute a town is liable only for the negligence of the highway commissioner, now known as town superintendent. Where the plaintiff's horse ran away and injured her owing to the fact that it became frightened by the smell left by powder which had been used by the overseer of the road district in blasting rock from the roadbed and by seeing a pile of stones left in the highway by the overseer, the town is not liable if it do not appear that the work was done under the direction of the highway commissioner, or that he knew that it was going on, or of the existing condition, or that by the exercise of reasonable diligence he could have known of the condition. *Booth v. Town of Orleans* (1911), 147 App. Div. 240, 131 N. Y. Supp. 1088.

Time of presentation of claim; action by non-resident.—The cause of action accrues when the injury or damage was done. The purpose is to give speedy information to the town of the accident, injury, and consequent damage and intention to make a claim against the town. The presentation of the claim relates to procedure and the mode and manner of enforcing the remedy and the time within which notice shall be given after the injury. Only ancillary administrators appointed in the state can prosecute the action. *Dodge v. Town of North Hudson*, 188 Fed. 489 (1911).

§§ 104, 120.

State highways.

L. 1912, chs. 157, 183, 474.

Nature of liability; action by resident of another state.—This section creates a liability of the town which did not exist at common law. The action is in tort, and is not local, but transitory, and the action may be brought by a non-resident under the procedure of the state where the action is brought. *Dodge v. Town of North Hudson*, 177 Fed. 986 (1910).

§ 104. Custody of highway moneys; undertaking of supervisor.

Bonds of supervisors of towns for the receipt of State Highway moneys must be given for the faithful disbursement, safe-keeping and accounting of all such moneys received by them and may cover the full term of office. Rept. of Atty. Genl. (1911), Vol. 2, p. 688.

§ 120. Highways to be constructed or improved by the state.—Route 3. Commencing at a point to be determined by the commission, on the dividing line between the towns of Orangetown, Rockland county, and the state of New Jersey, running thence northerly through the eastern portion of Rockland county by the way of points at or near Nyack and Haverstraw, to a point to be determined by the commission, on the dividing line between Orange and Rockland counties, running thence northerly through the eastern portion of Orange county to the city of Newburgh, thence northerly from the city of Newburgh to a point to be determined by the commission, on the dividing line between Ulster and Orange counties, running thence northerly through the eastern portion of Ulster county to a point on the Rondout creek at or near the present chain ferry known as the "Sleightsburgh Ferry," thence over said creek into the city of Kingston by suitable bridge to be constructed and maintained by the commission, running thence northerly from the city of Kingston to a point to be determined by the commission, on the dividing line between Greene and Ulster counties, running thence northerly through the eastern portion of Greene county to points at or near Catskill, Athens and Coxsackie, to a point to be determined by the commission, on the dividing line between Albany and Greene counties, running thence northerly to the city of Albany. (*Amended by L. 1912, ch. 157, in effect Apr. 5, 1912.*)

Route 4-b. Beginning at a point on route number four to be determined by the commission, at or near Canisteo, in the county of Steuben, running thence southerly by way of Greenwood to Rexville; running thence southerly and westerly to a point to be determined by the commission on the dividing line between the counties of Steuben and Allegany; and running thence southerly and westerly to Whitesville, Allegany county. (*Added by L. 1912, ch. 474, in effect Apr. 18, 1912.*)

Route 7a. Commencing at the city of Schenectady on route number six and running southwesterly to Duanesburg, in the county of Schenectady; thence in a general southwesterly direction, along a course to be determined by the commission, to a point to be determined by the commission upon route number seven in the town of Schoharie in Schoharie county. (*Added by L. 1912, ch. 183, in effect Apr. 5, 1912.*)

Route 15. Commencing at the junction of Big Creek road and Seneca

street road in the town of Hornellsville, Steuben county, running thence northwesterly within the county of Steuben to and through the village of Arkport, and northerly, within such county, along the road on the easterly side of Arkport valley, known as Dansville road, through Doty's Corners and by way of the Stony Brook Glen road in the town of Dansville, Steuben county, to the Livingston county line; thence through the town of North Dansville in Livingston county to the village of Dansville; thence northerly to the intersection of Gibson and South streets; thence northeasterly along Gibson street to Main street; thence northwesterly along Main street to the intersection of Main and Exchange streets; thence southwesterly along Exchange and South streets to the intersection of South and Gibson streets, and from the intersection of Main and Exchange streets along the highway from Dansville to Groveland station on the east side of the Genesee valley through the towns of North Danville, Sparta and Groveland to Groveland Station; thence northerly along the highway leading from Groveland station to Geneseo on the east side of the Genesee valley in the town of Groveland to its intersection with the improved county highway running from Mount Morris to Geneseo; thence westerly through the towns of Groveland and Mount Morris to the village of Mount Morris; thence through the village of Mount Morris northwesterly and northerly by the way of the villages of Moscow and York Center to a point on route number six in the village of Caledonia; thence easterly along route six to Canawaugus; thence northerly to a point to be determined by the commission on the dividing line between Livingston and Monroe counties, thence northerly to route sixteen in Scottsville; also from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county. (*Amended by L. 1911, ch. 752 and L. 1912, ch. 473, in effect Apr. 18, 1912.*)

L. 1912, ch. 473, § 2.—The moneys appropriated by chapter five hundred and fifty-nine of the laws of nineteen hundred and eleven, for the improvement and completion of that part of route number fifteen between Hornell and to and through the village of Dansville, shall be immediately available for the construction of such route as hereby amended, including that portion thereof from the point where the street in the village of Arkport, Steuben county, intersects the north and south road leading from Hornell to Doty's Corners, running thence westerly about three-quarters of a mile, thence northwesterly and northerly to Van Scoters Corners, Allegany county, to connect with a proposed county highway in said county.

Route 23-a. Commencing on route six in the village of Ilion at its intersection with Otsego street, running thence southerly through Cedarville, Chepachet and to the westerly line of the village of West Winfield, there connecting with route twenty-three. (*Added by L. 1912, ch. 535, in effect Apr. 19, 1912.*)

Route 30. Commencing at Rouses Point, in Clinton county, running

thence westerly through the northern part of Clinton county, to a point to be determined by the commission, on the dividing line between Franklin and Clinton counties, running thence westerly by the way of Burke, Malone and Moira, to a point to be determined by the commission, on the dividing line between Saint Lawrence and Franklin counties, running thence westerly to Lawrenceville, running thence southerly to a point at or near Nicholville, running thence westerly and southwesterly by the way of Potsdam, Canton and Gouverneur, to a point to be determined by the commission, on the dividing line between Jefferson and Saint Lawrence counties, running thence southwesterly by the way of Philadelphia to Watertown, running thence southerly from Watertown, by the way of Adams and Pierrepont Manor, to a point to be determined by the commission on the dividing line between Oswego and Jefferson counties, running thence southerly and southwesterly and westerly by the way of Pulaski and Union Square to Oswego, running thence southerly from Oswego by way of Hannibal to a point to be determined by the commission, on the dividing line between Cayuga and Oswego counties, running thence southwesterly through the northern part of Cayuga county to a point to be determined by the commission on the dividing line between Wayne and Cayuga counties, running thence southwesterly and westerly by the way of Red Creek, Wolcott, Alton, Sodus, Williamson and Ontario to a point to be determined by the commission on the dividing line between Monroe and Wayne counties, running thence southwesterly to the city of Rochester, running thence westerly from the city of Rochester by way of Spencerport, to a point to be determined by the commission, on the dividing line between Orleans and Monroe counties, running thence westerly to points at Albion and Medina, running thence northwesterly and northerly to Ridgway on the Ridge road; thence westerly along the Ridge road through Jeddo, Johnson Creek, Hartland Corners and Ridge Road Settlement; thence southwesterly to Wright's Corners; thence westerly through Warren's Corners and Cambria to a point two and five-tenths miles directly north of Pekin on the Ridge road; thence southerly along the Town Line road through Pekin to a point on the Saunders Settlement road to Sanborn; thence westerly and southwesterly along the Saunders Settlement road to Niagara Falls to connect with route number eighteen. (*Amended by L. 1910, ch. 648, L. 1911, ch. 716, L. 1912, ch. 51 and L. 1912, ch. 477, in effect Apr. 18, 1912.*)

Route 37. Commencing at a point on route twenty-six at Dolgeville, running thence easterly along the old state road by way of Oppenheim, Lasellville, Garoga and Rockwood to the city of Johnstown in Fulton county, running thence easterly by way of West Perth to Perth Center, thence in a northerly direction to Broadalbin by way of Vail Mills, thence easterly through Mills Corners to a point to be determined by the commission on the dividing line between Saratoga and Fulton counties, thence easterly through Whiteside Corners, Greens Corners, Mosherville, East

L. 1912, ch. 83.

Construction of county highways.

§ 122.

Galway, Rock City Falls, and North Milton to Saratoga Springs, connecting there with route number twenty-five. (*Amended by L. 1910, ch. 648 and L. 1912, ch. 475, in effect Apr. 18, 1912.*)

Route 37a. Beginning at the hamlet of Malta, in the town of Malta, Saratoga county, and running thence westerly to east line; thence north-westerly to Corps Corners; thence northerly through V Corners to the village of Ballston Spa. (*Added by L. 1912, ch. 476, in effect Apr. 18, 1912.*)

Route 37a. Beginning at the village of Ballston Spa, on route twenty-five, running thence westerly along the town line road between the towns of Ballston and Milton, through Tibbetts Corners, Harmony Corners and Pettits Corners to Scotch church, and thence northerly through Galway village, connecting with route thirty-seven at General Carpentier mansion. (*Added by L. 1912, ch. 542, in effect Apr. 19, 1912.*)

Route 37-b. Beginning at the hamlet of Malta, in the town of Malta, Saratoga county, and running thence westerly to east line; thence north-westerly to Corps Corners; thence northerly through V Corners to the village of Ballston Spa. (*Added by L. 1912, ch. 542, in effect Apr. 19, 1912.*)

Route 38-a. Commencing at the village of Cobleskill, Schoharie county, upon state route seven, and running thence northwesterly, or westerly and northerly, along a course to be determined by the commission, to Sharon Springs, connecting thereat with an improved stone road leading northerly from Sharon Springs. (*Added by L. 1912, ch. 179, in effect Apr. 5, 1912.*)

Route 45. Commencing at a point on route twelve in the village of Watkins and running thence easterly and thence northerly on the east shore of Seneca lake through the hamlets of Hector and North Hector to a point on the dividing line of Schuyler and Seneca counties, thence northeasterly through the hamlet of Caywood to the village of Lodi and thence easterly to the village of Interlaken, connecting with route thirty-six. (*Added by L. 1911, ch. 356 and amended by L. 1912, ch. 57, in effect Mch. 21, 1912.*)

§ 122. Construction or improvement of county highways.—The county highways to be constructed or improved under this article at the joint expense of the state and county shall be those highways in each county determined by the commission to be of sufficient public importance to come within the purposes of this chapter so as to constitute a part of a properly developed system of improved market roads within the county, taking into account the use, location and value of such highways for the purposes of common traffic and travel. Such county highways shall be equitably apportioned by the commission among the several counties without discrimination. In making such apportionment the commission shall take into consideration the total mileage of state highways which shall be hereafter constructed or improved in each county, and also the highways therein which have been constructed or improved prior to the taking effect

§§ 129, 134, 137.

Highways in certain cities.

L. 1912, chs. 83, 88.

of this article from funds made available by the issue and sale of bonds as provided in section twelve of article seven of the constitution, so that there shall be an equitable distribution as between the counties of all highways built in whole or in part from such funds. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 129. Order of construction of county highways.—Upon the receipt of such resolution the commission shall proceed with the improvement or construction of such county highway as provided in this article. The construction and improvement of such county highways and sections thereof shall be taken up and carried forward within a county in the consecutive order as determined by the date of the receipt by the commission in each case of the certified copy of the final resolution, so far as is practicable in the opinion of the commission. No such highway shall be placed upon the list of highways to be constructed or improved nor receive a consecutive number on such list, unless such resolution shall appropriate and make immediately available for such construction or improvement the counties' share of the cost thereof. (*Amended by L. 1910, ch. 247, L. 1911, ch. 646 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 134. Acceptance of county highway.

Effect of waiver of 30-day period.—A resolution of the board of supervisors waiving the twenty-day period prescribed by this section after receiving notice of the completion of the work on a county highway, is not alone sufficient to warrant the immediate acceptance of the work and payment of the contract price by the State Highway Commission. Rept. of Atty. Genl. (1911), Vol. 2, p. 701.

§ 137. State and county highways in villages and cities of the second and third classes.—A state or county highway may be constructed through a city of the second or third class or a village in the same manner as outside thereof, unless the street through which it runs has, in the opinion of the commission, been so improved or paved as to form a continuous and improved highway of sufficient permanence as not to warrant its reconstruction, in which case such highway shall be constructed or improved to the place where such paved or improved street begins. If it is desired to construct or improve any portion of a state or county highway within such village or city of the second or third class at a width greater than that provided for in the plans and specifications therefor, or if a modification of the plans and specifications is desired by which the cost thereof is increased, the board of trustees of such village or common council of such city shall petition the commission by resolution, to so modify such plans and specifications as to provide for such construction. The commission shall thereupon cause the plans, specifications and estimate for such highway to be modified so as to provide for such additional construction, and shall provide therefor in the contract. Upon the completion of such state or county highway within the village or city of the second or third class in accordance with such modified plans and specifications the com-

L. 1912, ch. 88.

Connecting highways.

§ 138.

mission shall notify the board of trustees or common council, as the case may be, as provided in the case of a county highway. Such board or common council may file a written protest against the acceptance of such work with the commission who shall examine in respect thereto, and if it is sustained the commission shall delay the acceptance of the highway within the village or city until it be properly completed. Upon the proper completion thereof and the notification as above provided, the commission shall certify to the board of trustees or common council the cost of such additional construction, and such board or common council shall pay the same out of moneys raised by tax or from the issue and sale of bonds as provided in the village law, if in a village, or by the general or special act governing bond issues and taxation in any such city if in a city of the second or third class. The provisions of the general village law, special village or city charters and other general or special laws relative to the pavement or improvement of streets and the assessment and payment of the cost thereof shall apply, as far as may be, to such additional construction and the assessment and payment of the cost thereof. (*Amended by L. 1910, ch. 233, L. 1911, ch. 88 and L. 1912, ch. 88, in effect Apr. 3, 1912.*)

§ 138. Connecting highways in villages and cities of the second and third classes.—The board of trustees of a village or the common council of a city of the second or third class may, by resolution, petition the commission for the construction or improvement of a highway to connect streets or highways within the village or a city of the second or third class, which have been paved or improved, with county highways which have been heretofore built under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof. If in the judgment of the commission public convenience requires the construction or improvement of such connecting highway, the commission shall cause plans, specifications and estimates to be prepared, and shall cause the same to be transmitted to the board of supervisors of the county wherein such highway is situated, with a written statement of their reason for providing for such construction or improvement. A copy of such statement shall be filed in the office of the county clerk of such county. The board of supervisors shall thereupon adopt a resolution providing for such construction or improvement as provided in this article. The payment of the cost of such construction or improvement shall be provided for in such resolution as in other cases, and such payment shall be made in the same manner. A certified copy of such resolution shall be filed in the office of the commission. The construction or improvement of such connecting highway shall then be taken up in the order and manner provided in this article for the construction or improvement of county highways. If it is desired to construct or improve any portion of such a connecting highway at a width greater than that provided for in the plans and specifications therefor, or if a modification of such plans and specifications is desired by which the cost thereof will

§§ 139, 141.

Cost of county highways.

L. 1912, ch. 83.

be increased, the board of trustees of the village or the common council of the city of the second or third class shall proceed as in the preceding section to secure such a modification of the plans and specifications as will provide for such desired construction. The provisions of the preceding section shall apply in like manner to the connecting highway to be constructed or improved as provided in this section. (*Amended by L. 1911, ch. 88 and L. 1912, ch. 88, in effect Apr. 3, 1912.*)

§ 139. Resolution to provide for raising money.—The resolution of the board of supervisors providing for the construction or improvement of a county highway or section thereof shall appropriate and make immediately available to the requisition of the commission an amount sufficient to pay the share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located. (*Amended by L. 1910, ch. 247 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 141. Division of cost of county highways; payments by county treasurer.—Whenever the construction or improvement of a county highway or section thereof under a contract shall be completed and the final payment therefor shall have been made the commission shall prepare a statement of the cost of such construction or improvement, including engineering expenses, inspection and all charges and expenses properly chargeable thereto, showing in detail the date of each payment, and the purpose and amount of such payment. Such payments shall be grouped as far as practicable by dates and the total thus obtained shall be deemed the cost of such construction or improvement, and a certified copy of said statement shall be filed by the commission in the office of the comptroller. If a county highway or section thereof so constructed or improved shall be situate in two or more counties, the commission shall apportion such expense to such counties according to the cost of such construction or improvement in each of such counties. Such statement when audited and approved by the comptroller shall be filed in his office and shall be final, and a duplicate thereof shall be filed with the county treasurer of each county wherein the highway or section thereof has been improved. If the board of supervisors of any county shall have heretofore provided funds to pay two per centum of the cost of such county highway as thus determined, for each one thousand dollars of assessed valuation of real and personal property liable to taxation in said county for each mile of public highway within such county to be ascertained and determined by dividing the total assessed valuation of taxable property in said county as equalized for state purposes by the total mileage of highways in said county, exclusive of the streets and highways within any incorporated city or village in said county, but not exceeding thirty-five per centum of the cost for the county as shown by such statement, it shall be the duty of the county treasurer to pay the amount thereof upon the requisition of the commis-

sion and thereafter the county shall be deemed to be fully discharged of its obligation to the state on account of the construction or improvement of such county highway, except the obligation to pay their proportionate amount of the state tax for the state's share of the cost of construction. At least ten days' notice shall be given by the commission to the county treasurer prior to the making of such a requisition. A copy of each contract providing for the construction or improvement of a county highway, and the plans and specifications therefor, together with copies of certificates showing the progress of the work, upon which requisitions are drawn, shall be filed with the county treasurer. The mileage of highways to be used in determining the amounts to be charged to a county under this section shall be the tables of mileage formerly prepared by the state engineer until the tables as provided in this chapter are filed. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 142. County or town may borrow money.—Whenever the board of supervisors shall have, by resolution, appropriated and made immediately available to the requisition of the commission an amount sufficient to pay its share of the cost of such construction or improvement which is to be borne by the county within which such highway or section thereof is located, such amount so appropriated shall be a county charge and shall be paid by the county treasurer of the county in which such highway or section thereof is located, upon the requisition of the commission. If there *is not sufficient funds in the county treasury to pay such share of the county of the cost of construction of such improvement so appropriated and made available, the county treasurer is authorized to borrow a sufficient amount to pay such share in anticipation of taxes to be collected therefor, or the issuance of bonds as hereinafter provided, and to pledge the faith and credit of the county for the payment of the amount when due, with interest. The board of supervisors may, by resolution, authorize the issuance and sale of bonds of the county to an amount not exceeding the share of the county as apportioned by the commission, or if such apportionment has not been made, to an amount not exceeding thirty-five per centum of the estimated cost of the construction or improvement of such county highway as shown by the estimate approved by the board of supervisors pursuant to section one hundred and twenty-eight of this chapter, and apply the proceeds of such bonds to the payment of the share of the cost of construction of such highway to be borne by the county, appropriated and made immediately available as aforesaid or to the payment and redemption of any certificates of indebtedness issued as above provided. Said bonds shall be payable not more than thirty years from their date. The board of supervisors shall provide for the assessment, levy and collection by tax of all or any part of the share of the cost of such improvement apportioned to the county which has not been provided for by the

* So in original.

§§ 143, 154.

Costs; commissioners' fees.

L. 1912, chs. 83, 88.

issuance of county bonds as a county charge. (*Amended by L. 1909, ch. 486, L. 1910, ch. 580 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 143. **Apportionment and payment of expense of constructing county highway through or into cities of the second and third classes.**—If a county highway be constructed, under the provisions of this chapter, through or within a city of the second or third class, the board of supervisors of the county in which the city is situated shall, by resolution, apportion the cost thereof between the county and city as follows: Fifteen per centum of the portion of such highway within a city shall be borne by the city and thirty-five per centum thereof by the county. The share to be borne by the county shall be paid or provided for in the manner required by this chapter in the case of an apportionment of such cost between the county and a town. The share to be borne by the city shall be paid by the imposition of a tax therein for the full amount thereof or, in case of a city of the second class, if the common council and the board of estimate and apportionment shall so determine, then by the issuance and sale of city bonds as provided in the second class cities law, and in the case of a city of the third class, if the common council or board of aldermen thereof so determine, then by the issuance and sale of city bonds, to be payable in not more than thirty years from their date, bearing interest at not to exceed the legal rate, and to be sold for not less than par; or, such common council or board of aldermen may cause a portion of the city's share to be raised by tax at the time of the next ensuing annual city tax levy and the balance to be raised by the issuance and sale of bonds as herein above provided. (*Added by L. 1912, ch. 88, in effect Apr. 3, 1912.*)

§ 154. **Costs; commissioners' fees.**—In all cases of assessment of damages by commissioners appointed by the court, the costs thereof shall be a county charge in the first instance, and be paid by the county treasurer as hereinbefore provided, except when reassessment of damages shall be had on the application of the party for whom damages were assessed, and such damages shall not be increased on such reassessment, the costs shall be paid by the party applying for the reassessment, and when application shall be made by two or more persons for reassessment of damages all persons who may be liable for costs under this section shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action. Each commissioner appointed by the court as provided in this article for each full day necessarily employed as such, shall be entitled to the sum of six dollars and his necessary expenses. The amount of compensation to which such commissioners are entitled shall be determined by the court in which the proceeding is pending, upon verified accounts presented by such commissioners, stating in detail the number of hours necessarily employed in the discharge of their duties; and the nature of the services rendered, upon eight days' notice

L. 1912, ch. 83.

Maintenance and repair.

§§ 160, 170, 171.

to the attorney for the petitioner in the proceeding. (*Amended by L. 1912, ch. 182, in effect Apr. 5, 1912.*)

§ 160. **Maintenance of detours during construction.**—The maintenance and repair of any highway or right of way designated by the commission for use as a detour, during the construction of a state or county highway, shall be under the supervision of the commission and shall be paid for out of the construction fund or the state's share of the money available for maintenance and repair of improved roads in such county. Such highway or right of way designated as a detour by the commission shall be deemed an improved highway during construction. (*Added by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 170. **Commission to provide for maintenance and repair.**—The maintenance and repair of improved state and county highways in towns, incorporated villages and cities of the third class, exclusive, however, of the cost of maintaining and repairing bridges having a span of five feet or over, shall be under the direct supervision and control of the commission and it shall be responsible therefor. The commission shall have power to adopt proper rules and regulations therefor and the work may be performed by the town or the district or county superintendents as therein provided, subject to the supervision and control of the state superintendent of highways, or the commission may direct the superintendent of highways to perform such work in such manner as it may deem expedient; the commission shall also have the power to contract for any necessary repairs and the state superintendent of highways shall provide for the due supervision of said work. The commission shall also have the power to provide for a system of patrol of such highways, or adopt such other system as may seem expedient so that each section of such highways shall be under constant observation, and be effectively and economically preserved, maintained and repaired. The state superintendent of highways shall appoint the patrolmen, subject to the approval of the commission, and he shall have the power to purchase materials for such maintenance and repair, and contract for the delivery thereof at convenient intervals along such highways. (*Amended by L. 1911, ch. 646 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 171. **Appropriations by state; apportionment of moneys.**—There shall be annually appropriated for the maintenance and repair of improved state and county highways an amount sufficient to provide therefor, based upon the estimates prepared and submitted by the commission to the legislature as provided in section twenty-one of this chapter. Not less than ninety per centum of the amount so appropriated shall be apportioned by the commission each year among the counties in accordance with the proportion which the amount to be apportioned bears to the total amount of

such estimates. The comptroller, upon the requisition of the commission, shall draw his warrant upon the state treasurer in favor of the county treasurer of the county in which the improved state or county highways are located, for an amount which shall not be in excess of the total amount apportioned by the commission to such county. The moneys so paid shall be deposited by the county treasurer to the credit of the fund for the maintenance of improved state and county highways in the county. Any moneys so deposited and placed to the credit of the fund for such maintenance shall be available and subject to the order of the state highway commission at any time prior to the total expenditure thereof. Not more than ten per centum of the amount so appropriated each year may be reserved by the commission for the repair or rebuilding of improved state or county highways, which ten per centum shall not be deemed to be available until after the moneys paid the county treasurer of a county as heretofore provided shall have been expended, and which shall be paid by the state treasurer upon the warrant of the comptroller drawn upon the requisition of the commission issued when required for such purposes. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 172. **Cost to town for maintenance of state and county highways.**—Each town shall pay for the maintenance and repair of state and county highways each year the sum of fifty dollars for each mile or major fraction of a mile of the total mileage of state and county highways within the town, each incorporated village shall pay for such maintenance and repair at the rate of one and one-half cents for each square yard of surface of such improved highway maintained by the state within its corporate limits, and each city of the third class shall pay for such maintenance and repair at the rate of three cents for each square yard of surface of such improved highway maintained by the state within the incorporated limits of such city. On or before the first day of November in each year the commission shall transmit to the clerk of the board of supervisors of each county, to the board of trustees of each village and to the common council of said city a statement specifying the number of miles of improved state and county highways in each town, the number of square yards of surface of such improved highway as hereinbefore provided in each village or said city, in such county and the amount which each of such towns, villages and cities, is required to pay into the county treasury on account of the maintenance of state and county highways and a copy of such statements shall be forwarded to the county treasurer. The board of supervisors of the county, the board of trustees of an incorporated village and the common council of said city shall cause the amount to be paid by each town, incorporated village and said city of the county, to be assessed, levied and collected therein in the same manner as other town, village and city charges, in the several towns, villages and cities of the third class, and such amount when collected shall be paid into the county treasury to the credit of the fund for the main-

L. 1912, ch. 83.

Maintenance and repair.

§§ 173-175.

tenance of state and county highways in the several towns, incorporated villages and said cities of the county. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 173. **Disbursement of maintenance funds.**—The amount apportioned by the commission for the maintenance and repair of state and county highways in each county shall be expended for the repair and maintenance of such highways in such county, but the amount paid by each town, incorporated village or city of the third class as provided by section one hundred and seventy-two shall be expended for the repair and maintenance of such highways in such town, incorporated village or said city. The county treasurer shall pay out the moneys received by him as provided in this article upon the written order of the representative of the commission, who, before drawing any such orders shall give a bond in an amount to be specified by the commission, and with such sureties as shall be approved by the commission; such bond shall be filed in the office of the state comptroller and certified copy thereof filed in the office of the state highway commission and in the office of the county treasurer. Such orders shall be issued upon vouchers duly presented to the representative of the commission in the form to be prescribed by it. The commission may adopt rules and regulations providing for the presentation and payment of accounts for maintenance and repair. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 174. **Reports of county treasurer.**—The county treasurer shall report to the commission annually and at such other times as required by the commission, the amount received by him on account of the maintenance and repair of improved state and county highways in the several towns, incorporated villages and cities of the third class in his county and the expenditures made by him out of such moneys. The form and contents of such report shall be prescribed by the commission. (*Amended by L. 1912, ch. 83, in effect, Apr. 2, 1912.*)

§ 175. **Compensation of town superintendents.**—If a town superintendent shall be directed by the commission to perform services in respect to the maintenance and repair of improved state and county highways within his town his compensation therefor shall be paid out of the moneys set apart as provided in this article for such maintenance and repair. Such compensation shall be fixed by the commission but shall in no case exceed the amount fixed by the town board as compensation for his services performed for the town under this chapter, and in rendering his monthly bill to the supervisor, and his annual bill to the town board, no charge shall be made against the town for an expense or per diem charge upon any date for which an audit shall have been allowed by the state commission. And said state commission shall make proper rules and regulations to carry into effect this provision and to furnish to the town board prior to the annual

§§ 176, 177, 191.

Maintenance and repair.

L. 1912, ch. 83.

audit day due information as to the dates, compensation and expenses allowed by them to said town superintendent from the state repair fund. (*Amended by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 176. **Liability of state for damages.**—The state shall not be liable for damages suffered by any person from defects in state and county highways, except such highways as are maintained by the state by the patrol system, but the liability for such damages shall otherwise remain as now provided by law, notwithstanding the construction or improvement and maintenance of such highways by the state under this chapter; but nothing herein contained shall be construed to impose on the state any liability for defects in bridges over which the state has no control. Within the limits of incorporated villages and cities of the third class the state shall maintain a roadway of equal width to that lying immediately outside of said incorporated limits, the location of the state's portion of such roadway within said incorporated limits to be determined by the center line of the roadway as shown on the plans on file with the state highway department, and the state shall be liable for damages to persons or property only when such damages shall occur as a result of the defective condition of the portion of improved highway as above described. (*Amended by L. 1910, ch. 570 and L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 177. **Maintenance of state and county highways in villages.**—(*Repealed by L. 1912, ch. 83, in effect Apr. 2, 1912.*)

§ 191. **Highways by dedication.**

To constitute a highway there must not only be a dedication but there must also be an acceptance by the public, accomplished either by an official act by the authorities competent to accept the highway, or by common or public user; and such an acceptance is not established by a sale of lots by reference to a map on which streets are laid down; nor by the enjoyment by the purchasers of such lots or the private easements thereby created; nor by mere public travel without action by the authorities in repairing and maintaining or using the street; nor by the patrolling thereof by police officers. *Matter of Starr Street* (1911), 73 Misc. 381, 131 N. Y. Supp. 71.

Dedication of highway.—Where a map was filed in 1836, laying out a tract of land into blocks of building lots bounded by streets, and subsequent conveyances of portions thereof were made with reference to such map, such acts amounted to a dedication of the land within the lines of the streets as designated on such map for street purposes, and the subsequent adoption in 1910 by the common council of the city in which the lands lay of a resolution approving a petition of adjoining lot-owners to open a portion of one of the streets was an acceptance of it and constituted the same a highway. *Stillman v. City of Olean* (1911), 72 Misc. 196, 129 N. Y. Supp. 515.

A strip of land eleven feet wide cannot become a highway by user by mere travel over it without action by the public authorities in repairing or maintaining it. *Ricketson v. Village of Saranac Lake* (1911), 73 Misc. 52.

Abandonment of highway.—Mere lapse of time does not effect an abandonment or revocation of dedication of a highway. *Stillman v. City of Olean* (1911), 72 Misc. 196, 129 N. Y. Supp. 515.

L. 1912, ch. 246.

Opening highways; notice.

§§ 195, 281, 282.

Consent to close a highway must be by a majority of the town board. Subsequent signature of one member of the town board, procured after the board had adjourned, is ineffective to make a majority. *Greene v. Goodwin Sand & Gravel Co.* (1911), 72 Misc. 192, 129 N. Y. Supp. 709.

Injunction to restrain change of highway.—Those living upon a highway that affords them access to other places may maintain an action to prevent the demolition of a section of the highway, though that portion threatened with destruction is not the part upon which their lands abut and the abutting owners at the point of demolition consent thereto. *Greene v. Goodwin Sand & Gravel Co.* (1911), 72 Misc. 192, 129 N. Y. Supp. 709.

§ 195. Notice of meeting.—The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service can not be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry. If the highway proposed to be laid out shall cross a railroad the applicant shall also cause notice of the time and place of the meeting of the commissioners to be given to the railroad company as required by section ninety of the railroad law. (*Amended by L. 1912, ch. 246, in effect Apr. 10, 1912.*)

§ 281. Definitions.

The term "chauffeur" applies to an owner of an automobile who operates it himself and in which he carries passengers who pay him therefor, either in accordance with the distance traveled or otherwise. Rept. of Atty. Genl. (1911), Vol. 2, p. 685.

The term "motor vehicle," as defined by this section, does not include ambulances operated by humane societies, veterinary or private hospitals. Rept. of Atty. Genl. (1911), Vol. 2, p. 655.

§ 282. Registration of motor vehicles; age of operator; fees; renewals.

Registration of automobiles owned by United States not required.—The State is not entitled to demand fees for the registration of automobiles owned by the government of the United States and used in the service of the War Department. Rept. of Atty. Genl., Jan. 26, 1912.

Ownership of a vehicle implies possession and control, and, in an action to recover for injuries caused by the negligent use of the vehicle, proof of ownership makes out a *prima facie* case against the owner, for it is presumed that he was either in person or through his agent in control of the vehicle at the time of the accident. Proof of registration is competent evidence of ownership. *McCann v. Davison* (1911), 145 App. Div. 522, 130 N. Y. Supp. 473.

Violation of the provisions of the statute as to registration and display of registration number is not *per se* proof of negligence. *Hyde v. McCreery* (1911), 145 App. Div. 729, 130 N. Y. Supp. 269.

SUP. III—15

§§ 286, 288, 289, 320.

Construction by county and town.

L. 1912, ch. 534.

Failure to apply for renewal within one year from expiration of registration.—The owner of a motor vehicle who fails to apply for a renewal of registration within one year from the expiration of the last registration is not entitled to renewal upon a renewal application but must apply as in the case of an original application. Rept. of Atty. Genl. (1911), Vol. 2, p. 686.

Disposal of motor vehicle after filing of renewal application.—Where a renewal application has been filed and the motor vehicle to which registration was assigned has been disposed of, it is within the administrative discretion of the Secretary of State, upon affidavit of the fact and upon the return of the number plates and certificate issued to the former owner and before the date upon which the registration would have taken effect, to cancel the registration and to transfer the fee to the credit of another registration of the former owner. He cannot properly refund the fee directly. Rept. of Atty. Genl., Jan. 29, 1912.

§ 286. Display of registration number.

Rules of the road.—The driver is not bound to go over on the extreme right-hand side of the highway; the rule of the road merely requires that the rider or driver of a horse or vehicle, on being overtaken by an automobile, shall, "as soon as practicable, turn to the right so as to allow free passage on the left." *Tooker v. Fowler v. Sellars Co.* (1911), 147 App. Div. 163, 132 N. Y. Supp. 213.

Action to recover damages for personal injuries received by the conductor of a trolley car who while crossing the road at night to operate a signal light was struck by the defendant's automobile. The plaintiff testified that, alighting from the right-hand side of his car, he passed behind it and, having seen the defendant's automobile coming from behind, continued to cross the left-hand side of the road to reach the signal, assuming that the defendant when he overtook the car would pass to the right instead of to the left. On all the evidence, it was held that a judgment for the plaintiff should be affirmed. The law of the road is not such an absolute rule that the plaintiff was bound to presume that the defendant on overtaking the trolley car would pass to the left rather than to the right, regardless of the fact that the road on the right-hand afforded a better passage. *Kalb v. Redwood* (1911), 147 App. Div. 77, 131 N. Y. Supp. 789.

§ 288. Local ordinances prohibited.

A local ordinance licensing and regulating express wagons and drivers will not apply to an automobile and chauffeur, both duly licensed by the state, engaged in the express business. *Barrett v. City of New York*, 189 Fed. 268 (1911).

§ 289. License of chauffeurs; renewals.

Officers and enlisted men of the United States Army, operating automobiles used in the service, need not be licensed. Rept. of Atty. Genl., Jan. 26, 1912.

§ 320. Construction or improvement of highways by county and town.—The board of supervisors of a county may provide for the construction or improvement of a highway or section thereof in one or more towns of the county at the joint expense of the county and town, as provided in this section. The board may, by resolution, direct the district or county superintendent to examine such highway or section thereof, and if the board considers such highway or section thereof, to be of sufficient importance to be constructed or improved as provided herein, it shall direct such district or county superintendent to prepare or cause to be prepared maps, plans, specifications and estimates therefor. Upon the completion of such

preliminary maps, plans, specifications and estimates they shall be submitted to the board of supervisors for approval, and such board may thereupon adopt a resolution providing for the construction or improvement of such highway in accordance with such plans, specifications and estimates. The board of supervisors shall award contracts for the construction or improvement of such highway and the provisions of section one hundred and thirty of this chapter shall apply so far as may be to such contracts. Such contract may be awarded to the town board of any town in which such highway or section thereof is located and the provisions of section one hundred and thirty-one of this chapter shall apply thereto so far as may be. The board of supervisors shall determine the portion of the cost of the construction or improvement of such highway to be borne by the county and the portion to be borne by the town or towns in which such highway is located. The amount so determined to be borne by the county shall be levied and collected as a county charge and paid into the county treasury. The amount to be borne by the town or towns in which the highway is located shall be levied and collected as a town charge and when collected shall be paid into the county treasury. If the construction or improvement of such highway involve the elimination of a grade crossing the portion of the cost of such elimination and the construction of a new crossing chargeable to the town in pursuance of law shall be deemed a part of the cost of the construction or improvement of such highway under the provisions of this section. The amount so paid by the town shall not be considered in determining the minimum amount to be levied and collected in each year for the repair and improvement of highways as provided in section ninety-four of this chapter nor shall such amount be considered in determining the amount to be paid by the state to the town for the repair and improvement of highways therein. The resolution of the board of supervisors providing for the construction or improvement of such highway may authorize the county treasurer of the county or the supervisors of the respective towns to borrow money on the faith and credit of the county or of such towns to pay the portion of the cost of such construction or improvement to be borne respectively by the county or such town or towns. Such resolution may also provide for the issue and sale of such bonds and shall conform so far as may be with the provisions of this chapter relating to a resolution authorizing a town to borrow money for highway purposes. The construction or improvement authorized by such resolution shall be done under the supervision and direction of the district or county superintendent. Payments therefor shall be made from time to time by the county treasurer upon the certificate of the district or county superintendent indorsed by the chairman of the board of supervisors. Such highways, when completed and accepted by the board of supervisors, shall be thereafter repaired and maintained at the sole expense of the towns in which they are located, unless the board of supervisors shall apportion

§§ 1, 2.

Bonds for construction.

L. 1912, ch. 298.

a share of the expense thereof upon the county. (*Amended by L. 1912, ch. 534, in effect Apr. 19, 1912.*)

§ 331. When town not liable for damages.

Application to bridges maintained by State.—*Quære*, as to whether the statutes giving immunity to towns for damages resulting from the fall of a bridge caused by vehicles exceeding certain weights apply to the State or any person or corporation maintaining bridges. In any event, where a person driving a traction engine weighing in the neighborhood of five tons over a canal bridge owned by the State was killed when the bridge collapsed, the State cannot escape liability on the theory that it was entitled to the protection of the statutes aforesaid where at the time of the accident the statutory load which a town bridge was required to bear was eight tons. Assuming that the statutory load which a town bridge must bear applies also to highway bridges across a canal maintained by the State, the State was negligent in allowing the bridge to remain in a condition where it would not bear the statutory load of eight tons for 104 days after the statute establishing that load went into effect. *O'Bryan v. State of New York* (1911), 148 App. Div. 542.

HIGHWAYS.

L. 1912, ch. 298.—An act making provision for issuing bonds to the amount of not to exceed fifty million dollars for the purpose of constructing and improving state and county highways, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and twelve. (*In effect if approved by the people, pursuant to § 9.*)

§ 1. Bonds authorized.—There shall be issued, in the manner and at the times hereinafter recited, bonds of the state in an amount not to exceed fifty million dollars, which bonds shall be sold by the state and the proceeds thereof paid into the state treasury, and so much thereof as shall be necessary expended for the purpose of constructing and improving the state and county highways as defined in the highway law. Said bonds when issued shall be exempt from taxation.

§ 2. Sale; interest; tax to pay; sinking fund.—The comptroller is hereby directed to cause to be prepared the bonds of this state to an amount not to exceed fifty million dollars, said bonds to bear interest at the rate of not to exceed four per centum per annum, which interest shall be payable semi-annually in the city of New York. Said bonds shall be issued for a term of fifty years from their respective dates of issue, and shall be sold for not less than par. The comptroller is hereby charged with the duty of selling said bonds to the highest bidder after advertising for a period of twenty consecutive days, Sundays excepted, in at least two daily newspapers printed in the city of New York and one in the city of Albany. Advertisements shall contain a provision to the effect that the comptroller, in his discretion, may reject any or all bids made in pursuance of said advertisements, and, in the event of such rejection, the comptroller is authorized to readvertise for bids in the form and manner above described as many times as in his judgment may be necessary to effect a satisfactory sale. Said

bonds shall be sold in such lots and at such times as may be required for the purpose of making partial or final payments on work contracted for in accordance with the provisions of this act, and for other payments lawfully to be made under the provisions thereof. There is hereby imposed a direct annual tax to pay and sufficient to pay the interest on each bond issued under this act as it falls due, and to pay and sufficient to pay and discharge the principal of each of such bonds within fifty years from the date thereof. The rate of such annual tax shall be five one-thousandths of a mill on each dollar of valuation of real and personal property in this state subject to taxation, for each and every one million dollars, or fraction thereof, in par value of said bonds issued under this act, and outstanding or to be outstanding during the fiscal year during which the amount of such tax is computed. The tax imposed, as herein provided, shall be assessed, levied and collected in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of the state. The proceeds of such tax shall be invested by the comptroller in securities in which he is authorized by law to invest the trust and sinking funds of the state, and together with the interest arising therefrom, any premiums received on the sale of said bonds, and interest accruing on deposits of money received from the sale of said bonds or from miscellaneous sources shall constitute a sinking fund which is hereby created. Said fund shall be used solely for the purpose of paying the principal and interest of bonds issued in accordance with the provisions of this act.

§ 3. **Moneys divided between state and county highways.**—The sum of twenty million dollars of the moneys hereby authorized to be raised shall be used solely for the construction and improvement of state highways as defined by section three of the highway law, and the sum of thirty million dollars of the aforesaid moneys shall be used solely for the construction and improvement of county highways as defined by section three of the highway law.

§ 4. **Apportionment of moneys.**—The state commission of highways is hereby directed, immediately after this law shall take effect, to equitably apportion among the counties containing towns the total amount of money hereby authorized. Said apportionment for each of said counties shall be computed on the following basis: On the population as fixed by the federal census of nineteen hundred and ten; on the aforesaid measured mileage of public highways outside of cities and villages as obtained pursuant to section sixty-nine of chapter thirty of the laws of nineteen hundred and nine, and on the total area; and the sum of one-third of each of these three factors thus obtained for each of said counties shall constitute such equitable apportionment.

§ 5. **Routes of state highways.**—The routes of the state highways to be

constructed and improved hereunder are those specifically set forth and described in section one hundred and twenty of the highway law, being chapter thirty of the laws of nineteen hundred and nine, and the acts amendatory thereof and supplemental thereto.

§ 6. **Routes of county highways.**—The routes of county highways to be constructed and improved hereunder are such as shall be determined by the state commission of highways with the approval of the boards of supervisors of the respective counties as set forth and prescribed by the highway law.

§ 7. **Control of construction.**—The work of construction and improvement of the aforesaid highways shall be under the management, supervision and control of the state commission of highways, and the provisions of articles six and seven of chapter thirty of the laws of nineteen hundred and nine, known as the highway law and the acts amendatory thereof and supplemental thereto, so far as they may be applicable and not inconsistent herewith, shall apply to and govern the work authorized by this act. The maps, plans, routes, specifications, resolutions and acts heretofore prepared or adopted for use in the improvement and construction of state and county highways shall be applicable to the work authorized under this act.

§ 8. **Surplus.**—Any surplus arising from the sale of bonds over and above the cost of the work herein provided for shall be applied to the sinking fund for the payment of said bonds.

§ 9. **Submission of law to people.**—This law shall not take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and the same shall be submitted to the people of this state at the general election to be held in November, nineteen hundred and twelve. The ballots to be furnished for the use of the voters upon the submission of this law shall be in the form prescribed by the election law and the proposition or question to be submitted shall be printed thereon in substantially the following form, namely: "Shall chapter (here insert the number of the chapter) of the laws of nineteen hundred and twelve, entitled 'An act making provision for issuing bonds to the amount of not to exceed fifty million dollars for the purpose of constructing and improving state and county highways, and providing for a submission of the same to the people to be voted upon at the next general election to be held in the year nineteen hundred and twelve,' be approved?"

IMMIGRANT LODGING PLACES.

Licensing and regulating; Labor L., § 156.

Cross-references.

IMMUNITY.

Waiver of; Penal L., § 2446.

INDIAN LAW.

(L. 1909, ch. 31.)

§ 3. Marriage and divorce.

A marriage solemnized by a clergyman without a license cannot be regarded as a marriage contracted "according to the Indian custom or usage" within the meaning of this section. Rept. of Atty. Genl., Feb. 8, 1912.

INSANITY LAW.

(L. 1909, ch. 32.)

§ 2. **Definitions.**—Poor person. The term “poor person,” when used in this chapter, means a person who is unable to maintain himself and having no one legally liable and able to maintain him.

Indigent person. The term “indigent person,” when used in this chapter, means one who has not sufficient property to support himself while insane, and the members of his family lawfully dependent upon him for support.

Institution. The term “institution,” when used in this chapter, means any hospital, asylum, building, buildings, house or retreat, authorized by law to have the care, treatment or custody of the insane.

Commission. The term “commission,” when used in this chapter, means the state commission in lunacy, designated as the state hospital commission.

Patient. The term “patient,” when used in this chapter, means an insane person committed to an institution according to the provisions of this chapter. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

ARTICLE II.

STATE HOSPITAL COMMISSION.

[Title of article thus amended by L. 1912, ch. 121, in effect Apr. 3, 1912.]

§ 3. **Appointment, qualifications, terms of office and salaries of commissioners.**—There shall continue to be a state commission in lunacy, to be designated the state hospital commission, consisting of three members, to be designated state hospital commissioners, all of whom shall be citizens of this state. One of them shall be a reputable physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, who has had five years' actual experience in the care and treatment of the insane in an institution for the insane. One of such commissioners shall be a reputable attorney and counsellor-at-law in the courts of this state of not less than ten years' standing. The third commissioner shall be a reputable citizen. The medical commissioner shall receive an annual salary of seven thousand five hundred dollars, and twelve hundred dollars in lieu of his traveling and incidental expenses, payable semi-monthly. Each of the other commissioners shall receive an annual salary of five thousand dollars, and twelve hundred dollars, in lieu of his traveling and incidental expenses, payable semi-monthly. The commission shall choose one of its members to be chairman thereof. The medical member of the commission shall hold office during good behavior. The full term of office of a commissioner other than the medical commissioner shall be six years. Any commissioner may be removed by the governor

L. 1912, ch. 121.

State hospital commission.

§§ 4, 9.

for cause, stated in writing, after an opportunity has been given him to be heard thereon. The commissioners shall be appointed by the governor, by and with the advice and consent of the senate. The commissioners in lunacy now in office shall be continued as state hospital commissioners for the respective terms for which they were appointed. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 4. Office and clerical force of commission; engineers, medical and other inspectors.—The commission shall be provided by the proper authorities with a suitably furnished office in the state capitol. It may employ a secretary, a stenographer, inspectors, engineers and such other employees as may be necessary. The salaries and reasonable expenses of the commission, inspectors, engineers, experts and of the necessary clerical assistants shall be paid by the treasurer of the state on the warrant of the comptroller, out of any moneys appropriated for the support of the insane.

The commission may also appoint a medical inspector, who shall be a well-educated physician, a graduate of an incorporated medical college, and who shall have had at least five years' actual experience in an institution for the care and treatment of the insane. Such inspector shall receive an annual salary to be fixed by the commission subject to the approval in writing of the governor and the action of the legislature, not to exceed five thousand five hundred dollars, and all his actual and necessary traveling expenses incurred by him in the performance of his duties, which shall be audited and paid in the same manner as the other expenses of the commission. He shall, subject to the direction of the commission, visit and inspect the several state hospitals and other institutions for the insane which are subject to the supervision, visitation and inspection of the commission. He shall, subject to the direction of the commission, make an examination, so far as the circumstances may permit, of the patients confined in such hospitals and institutions, especially those admitted thereto since his preceding visit, giving such as may request it suitable opportunity to converse with him apart from the officers and attendants. He shall perform such other duties as may be prescribed and directed by the commission. The commission may employ such other experts, regularly or from time to time, as may be necessary to enable it to advise the purchasing committee and the state hospitals as to purchasing, handling and consumption of supplies; the operation of the farms, and engineering matters.

The commission shall furnish the purchasing committee clerical and advisory help. Expenses of the purchasing committee shall be apportioned by the commission among the hospitals on such basis as it deems equitable. (*Amended by L. 1909, ch. 157, L. 1911, ch. 768 and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 9. Visitation and inspection of certain institutions.—Any member of the commission or the medical inspector may visit any sanitarium or other institution, wherein sick or infirm persons are received, cared for or treated,

for the purpose of ascertaining whether insane persons are confined therein without authority, and contrary to the provisions of law. All persons having charge of, and connected with, any such sanitarium or institution shall permit any member of the commission and the medical inspector to have free access to any portion thereof, and shall give such information and afford such facilities for inspection or inquiry, as the member of the commission, or the medical inspector, making such visit and inspection, may require. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 17. **Commission to provide for the prospective wants of the insane.**—The commission shall provide sufficient accommodations for the prospective wants of the poor and indigent insane of the state. To prevent overcrowding in the state hospitals, it shall recommend to the legislature the establishment of other state hospitals, in such parts of the state as in its judgment will best meet the requirements of such insane. It shall also furnish to the legislature in each year, an estimate of the probable number of patients who will become inmates of the respective state hospitals during the year beginning October first next ensuing, and the cost of all the additional buildings and equipments, if any, which will be required to carry out the provisions of this chapter relating to the care, custody and treatment of the poor and indigent insane of the state. No money shall be expended for the erection of additional buildings, or for unusual repairs or improvements of state hospitals, except upon plans and specifications to be approved by the commission and the governor. No municipality of the state shall have the power to modify or change plans or specifications for the erection, repair or improvement of state hospital buildings or the plumbing or sewage connected therewith. The commission may secure a blanket policy of insurance covering any or all of the buildings, property or fixtures of the state hospitals. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 18. **Hospital attorneys.**—(*Repealed by L. 1912, ch. 121, § 6, in effect Apr. 3, 1912.*)

§ 19. **Bureau of deportation for examination of insane, idiotic, imbecile and epileptic immigrants, alien and non-resident insane, and to attend to the deportation or removal thereof; powers and duties.**—There shall be established by the commission a bureau of deportation for the examination of insane, idiotic, imbecile and epileptic immigrants, and alien and non-resident insane, and to attend to the deportation or removal thereof, which shall consist of a medical examiner and such number of medical or lay deputies as may be necessary, to be appointed by the commission. The medical examiner shall be a reputable physician, a graduate of an incorporated medical college, of at least ten years' actual experience in the practice of his profession, and of at least five years' experience in the care and treatment of the committed or alleged insane in the New York

state hospitals, or elsewhere. The medical examiner shall receive an annual salary of five thousand dollars, to be paid in the same manner as the salaries of the assistants and clerks of the commission in lunacy. The medical examiner shall hold office during good behavior, and be removable by the commission for cause, stated in writing, after an opportunity to be heard has been given. The medical examiner and deputies shall devote their entire time to the performance of the duties hereby imposed upon them. The commission shall endeavor to arrange for the continued official recognition of such bureau by the proper authorities of the United States and other states for carrying out the purposes of this section. Arrangements may be made by the commission for suitable offices in the city of New York for the accommodation of such bureau, and the employment of such other persons as may be deemed necessary by them for the proper carrying into effect of the provisions and intent of this section. Such bureau shall maintain a careful inspection and observation of the methods and facilities for examining immigrants for mental disease and defect at the port of New York, and shall, from time to time, report to the commission upon the methods employed, and their efficiency, and shall render reports regarding the prevalence of insanity among aliens and the foreign born population of the state and shall make suitable recommendations as to means by which insane, idiotic, imbecile and epileptic aliens may be deported or returned. And such bureau shall examine and inspect alien and non-resident insane persons, and alleged insane persons in the state hospitals, other public institutions and elsewhere where such insane persons and alleged insane persons may be, for the purpose of determining whether they are suitable cases for deportation under the immigration law, or removal under the provisions of this section to other countries or states. The superintendents, or persons in charge of such hospitals, institutions or other places shall notify such bureau of all such cases coming under their jurisdiction and shall furnish all aid and information possible to accomplish the deportation or removal of such aliens and non-residents. The bureau shall notify the proper authorities having control of the enforcement of the immigration laws at the ports of entry of such immigrants as are found to be insane, idiotic, imbecile or epileptic, and such insane aliens as are or become public charges, or who are in the country in violation of law, and shall arrange for their deportation in accordance with the provisions of such laws. And in the case of non-residents they shall notify the state commission of the location of the same and in all suitable cases the commission shall grant the board the necessary authority for the investigation and removal of such non-resident insane persons. The bureau may, upon the request of any indigent insane persons, or the written consent of their relatives, legal representatives, or qualified friends, subject to the approval of the commission, remove such patients to any country, state or place to which they may properly belong. In making such transfers and removals the bureau shall, so far as is practicable, em-

ploy nurses and shall employ female nurses or attendants to accompany female patients unless it is certified by the medical superintendent that such patients are in condition to travel alone with safety. The duties hereby imposed upon such bureau shall be performed under the supervision of the commission, and in accordance with rules adopted by it. The commission may impose such other duties on such bureau as it may deem necessary and proper for carrying out the general purposes and intent of this section, and may also from time to time, when necessary, detail the medical examiner or a medical deputy of said bureau to perform the duties of the medical inspector. The medical examiner and deputies of such bureau shall be empowered to administer an oath when necessary to persons giving information relative to cases under investigation.

The chief examiner and examiner now members of the board of alienists shall be continued as the medical examiner and a deputy examiner of the bureau of deportation, at the same salaries now received by such examiners. (*Amended by L. 1910, ch. 604 and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 40. State hospitals for the poor and indigent insane.—There shall continue to be the following hospitals for the care and treatment of the poor and indigent insane of the state, who are citizens thereof, which are hereby declared to be corporations; but other insane persons, who are citizens of the state, may be admitted when there is room therein for them:

1. Utica State Hospital, in the city of Utica, in the county of Oneida.
2. Willard State Hospital, in the town of Ovid, in the county of Seneca.
3. Hudson River State Hospital, near the city of Poughkeepsie, in the county of Dutchess.
4. Buffalo State Hospital, in the city of Buffalo, in the county of Erie.
5. Middletown State Homeopathic Hospital, in the city of Middletown, in the county of Orange.
6. Binghamton State Hospital, in the city of Binghamton, in the county of Broome.
7. Rochester State Hospital, in the city of Rochester, in the county of Monroe.
8. Saint Lawrence State Hospital, in the city of Ogdensburg, in the county of Saint Lawrence.
9. Gowanda State Homeopathic Hospital, in the town of Collins, in the county of Erie.
10. Long Island State Hospital, at Flatbush, in the borough of Brooklyn, in the city of New York.
11. Manhattan State Hospital on Ward's Island, in the city of New York.
12. Kings Park State Hospital, at Kings Park, in the county of Suffolk.
13. Central Islip State Hospital, at Central Islip, in the county of Suffolk.
14. Mohansic State Hospital, at Yorktown Heights, in the county of

Westchester. (*Amended by L. 1910, chs. 57, 310, and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 43. **General powers and duties of boards of managers.**—Subject to the statutory powers of the commission, boards of managers shall have the general direction and control of all the property and internal affairs of the institutions for which they are respectively appointed, except as otherwise provided by law. The managers shall not receive any compensation for their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of the hospital. Each board shall, in October of each year, elect from among its members a president and a secretary. The superintendent shall personally submit, at each monthly meeting of the board of managers, a report showing changes in population, health of patients, officers and employees; accidents, suicides, unusual sickness, infectious diseases; important occurrences relating to the welfare of the patients and to the management and discipline of the employees, and such other matters as the board may specify. Each board shall:

1. Take care of the general interests of the hospital and see that its design is carried into effect, according to law, and the by-laws, rules and regulations, made as hereinafter provided.

2. Maintain an effective inspection of the hospital, for which purpose the board, or a majority of its members, shall visit and inspect the hospital at least once each month. Each board shall make a written report to the commission and to the governor within ten days after each inspection, such report to be signed by each member making the inspection. Such report shall state in detail the condition of the hospital and of its inmates, and such other matters pertaining to the management and affairs thereof as in the opinion of the board should be brought to the attention of the commission or the governor, and may contain recommendations as to needed improvements in the hospital or in its management.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor of the state, the state hospital commissioners, or any person appointed by the governor, the commission, or either house of the legislature to examine the same.

4. Hold regular meetings at least one each month, and cause to be typewritten within ten days after each such meeting, the minutes and proceedings of such meeting, and cause a copy thereof to be sent forthwith to each member of such board, to the commission, and to the governor.

5. Enter in a book, kept at the hospital for that purpose, the date of each visit of each manager.

6. Make to the commission, in October of each year, a detailed report of the results of their visits and inspection, with suitable suggestions and such other matters as may be required of them by the commission, for

the year ending on the thirtieth day of September preceding the date of such report. Such report shall be prepared by a committee of the board, subject to the approval of the board.

7. Investigate, hear and determine the truth of all charges made against the superintendent or other officer or employee of a hospital, issue subpoenas and take and hear testimony in respect to such charges. A witness attending before such board shall be entitled to the same fees as a witness attending before a court of record or a judge thereof, which shall be paid as other hospital charges. The resident officers shall admit such managers into every part of the hospital and its buildings, and exhibit to them on demand all the books, papers, accounts and writings belonging to the hospital, or pertaining to its business, management, discipline or government, and furnish copies, abstracts and reports whenever required by them. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 45. **General powers and duties of superintendent.**—The superintendent of each hospital shall be its chief executive officer, and in his absence or sickness, the first assistant physician or other officer designated by the superintendent shall perform the duties, exercise the powers, and be subject to the responsibilities of the superintendent. Subject to the by-laws and regulations established as hereinafter provided under the provisions of paragraph twelve of this section, the superintendent shall have general superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and the direction and control of all persons therein, and subject to such by-laws and regulations shall:

1. Personally maintain an effective supervision and inspection of all parts of the hospital and generally direct the care and treatment of the patients. To this end the superintendent shall make or cause to be made an examination of the condition of each patient, within five days after his admission to the hospital, and shall regularly visit all of the wards or apartments for patients at such times as the rules and regulations of the hospital shall prescribe.

2. Appoint such resident officers, including a woman physician, and such employees as he may think proper and necessary for the economical and efficient performance of the business of the hospital, and prescribe their duties and, for cause stated in writing, after an opportunity to be heard, discharge any of such employees in his discretion. The number of such resident officers and employees shall be determined from time to time by the commission. The commission may, with the approval of the governor, abolish the office of any such resident officers or employees. The superintendent may remove any resident officer, for cause stated in writing, after an opportunity to be heard, and such action shall be final. Upon any such removal he shall make a record thereof, with the reasons therefor, under the appropriate head in one of the books of the hospital.

The superintendent, assistant physicians, including the woman physician,

steward and matron, shall constantly reside in the hospital, or on the premises, except as provided in section forty-nine of this chapter, and shall be designated the resident officers of the hospital. The assistant physicians, including the woman physician, shall be graduates of an incorporated medical college, and shall possess such other qualifications as may be required by law.

3. Transmit, by mail, to the commission and to the president of the board of managers, within five days after any such discharge, information of such discharge, and of the cause thereof. The commission shall preserve the name of such officer, or employee, with the facts relating to his discharge, in a book provided for that purpose.

4. Designate hospital attendants or employees to act as special policemen, whose duty it shall be, under the orders of the superintendent, to arrest and return to the hospital insane persons who may escape therefrom, and to preserve peace and good order in such hospital and to fully protect the grounds, buildings and patients. Such attendants and employees, acting as policemen, shall possess all the powers of peace officers on the grounds and premises of such hospital and to the extent of one hundred yards beyond such grounds. The designation of such attendants and employees as special policemen, in pursuance hereof, shall not be deemed to supersede, on the grounds and premises of such hospital, the authority of peace officers of the jurisdiction within which such hospital is located.

5. Give such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expenses.

6. Maintain salutary discipline among all who are employed in the institution and enforce strict compliance with his instructions and uniform obedience to all rules and regulations of the hospital.

7. Establish and supervise a training school for attendants and nurses, under rules and regulations of the hospital.

8. Shall cause to be held at least two meetings of the medical staff each week, at which the condition of patients, especially those recently admitted, shall be considered, and matters of medical service generally shall be given attention. The superintendent shall cause a complete clinical record to be made of each patient, to be kept in such form and to comprise such matters as the commission may direct.

9. Cause full and fair accounts and records of the entire business and operations of the hospital to be kept regularly, from day to day, in books provided for that purpose.

10. See that all such accounts and records are fully made up to the last day of September in each year, and that the principal facts and results, with his report thereon, are presented to the board of managers within thirty days thereafter, who shall incorporate it in their report to the commission. The commission may prescribe the form of and the sub-

jects to be embraced in such reports. Such superintendent shall make other reports at such times, in such manner and in respect to such matters as the board of managers or the commission may direct.

11. Keep a book, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition committed, and an abstract of all orders, warrants, requests, petitions, certificates and other papers accompanying such persons.

12. A committee consisting of three superintendents to be appointed by the commission shall establish by-laws, rules and regulations governing the appointment and duties of officers and employees of all the state hospitals, and for the internal government, discipline and management of the same. Such by-laws, rules and regulations shall be subject to the approval of the commission and of the quarterly conference of superintendents and managers with the commission as provided in section forty-eight of this act. Such by-laws, rules and regulations shall be uniform for all the state hospitals, and shall not be inconsistent with the provisions of this chapter nor with the provisions of the civil service law and the rules and regulations established thereunder. The by-laws, rules and regulations established by the state commission in lunacy and in force on the first day of April, nineteen hundred and five, shall continue in force except as they may hereafter be modified, amended or repealed as provided by this chapter. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 48. **Meetings of superintendents.**—The superintendents or other officers of the several state hospitals designated by them shall meet, at least once in every three months, upon the call of the commission, at the office of the commission in Albany, or at such other place as may be designated by it, to consult with such commission with reference to matters relating to the care and operations of the state hospitals, and particularly with reference to the care and treatment of the insane. Each board of managers may, in its discretion, send one or more of its members to such meetings. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 49. **Salaries of officers and wages of employees.**—The commission, from time to time, with the approval in writing of the governor, secretary of state and comptroller, shall fix the annual salaries of the resident officers of the state hospitals, which shall be uniform for like service. They shall classify the other officers and employees into grades, and, except as provided by section fifty of this chapter, shall determine the salaries and wages to be paid in each grade, which shall be uniform in all the hospitals. The salaries and wages shall be included in the estimates and paid in the same manner as other expenses of the state hospitals. Food supplies shall be allowed to officers and employees and the families of the superintendents, first assistant physicians, directors of clinical psychiatry, pathologists and stewards, and where quarters are available in the judgment of the

superintendent, such maintenance may also be allowed senior assistant physicians and assistant physicians, subject to the approval of the commission. Such families shall consist only of the wives and minor children of such officers. No other persons, except those regularly employed, shall be allowed rooms and maintenance, except at a rate to be fixed by the commission; such supplies shall be drawn from the supplies provided for general hospital use. With the approval of the commission, officers or employees of state hospitals may be permitted to live outside of such hospitals, and shall receive such sums in lieu of the quarters or supplies furnished by the hospitals, as may be equitable. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 50. Salaries of certain officers and wages of certain employees prescribed.—The officers or employees of the state hospitals now or hereafter classified as occupying offices or positions specified in the schedule at the end of this section shall hereafter receive the salaries or wages per month indicated opposite the name or title of such office or position, except that where a minimum and maximum rate per month is prescribed, advancement from the minimum to the maximum rate shall be in accordance with the length of service, as prescribed in such schedule. If a minimum and maximum rate per month is not prescribed in such schedule, the salary or wages per month of such officer or employee shall be the amount indicated opposite the name or title of such office or position. Where an increase of salary or wages is allowed at a certain rate per month or otherwise for continuous service, continuous service performed prior to the time this section, as hereby amended, takes effect, in the same position or employment, shall be deemed a part of the continuous service in determining the salary or wages to which such officer or employee shall be entitled under this section. When employees are allowed to board and lodge away from the hospital a uniform rate of not less than sixteen dollars per month shall be allowed in addition to the regular monthly wages, and this amount shall be apportioned at the rate of four dollars per month for each meal and four dollars per month for lodging.

SCHEDULE OF SALARIES AND WAGES.

1.

ADMINISTRATION DEPARTMENT.

| Position | Wages per month | |
|---------------------------|-----------------|---------|
| | Minimum | Maximum |
| Man stenographer | \$70.00 | \$80.00 |
| Women stenographers | 55.00 | 68.00 |
| Watchmen ..... | .... | 50.00 |
| Policemen ..... | .... | 50.00 |
| Barbers | 45.00 | 55.00 |

§ 50. Salaries and wages. L. 1912, ch. 121.

| Position. | Wages per month | |
|--------------------------------|-----------------|---------|
| | Minimum | Maximum |
| Coachman | 55.00 | 60.00 |
| Drivers ..... | .... | 33.00 |
| Pages and messenger boys | 18.00 | 23.00 |

Increase of wages from minimum to maximum shall be made at the rate of two dollars per month for each six months of continuous service.

2.

FINANCIAL DEPARTMENT.

| Position | Wages per month | |
|---|-----------------|----------|
| | Minimum | Maximum |
| Bookkeeper | \$95.00 | \$105.00 |
| Accountant | 80.00 | 90.00 |
| Voucher and treasurer's clerk | 55.00 | 70.00 |
| Storekeeper. Institutions having less than 2,000 patients | 55.00 | 70.00 |
| Storekeeper. Institutions having 2,000 or more patients. | 70.00 | 85.00 |
| Man stenographer | 70.00 | 80.00 |
| Woman stenographer | 55.00 | 68.00 |

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. Where a telegraph office is maintained in an institution an extra compensation of ten dollars per month shall be allowed to the person performing the service of operator.

3.

SUPERVISORS.

| Position | Wages per month | |
|--------------------------------|-----------------|---------|
| | Minimum | Maximum |
| Chief supervisors, men | \$55.00 | \$68.00 |
| Chief supervisors, women | 50.00 | 62.00 |

| Position | Wages per month | |
|--------------------------|-----------------|---------|
| | Minimum | Maximum |
| Supervisors, men | 50.00 | 62.00 |
| Supervisors, women | 43.00 | 55.00 |

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

4.

NURSES AND ATTENDANTS.

| Position | Wages per month | |
|----------------------------|-----------------|---------|
| | Minimum | Maximum |
| Charge nurses, men | \$40.00 | \$47.00 |
| Charge nurses, women | 34.00 | 40.00 |
| Nurses, men | 35.00 | 43.00 |

L. 1912, ch. 121.

Salaries and wages.

§ 50.

| Position. | Wages per month | |
|---------------------------------|-----------------|---------|
| | Minimum | Maximum |
| Nurses, women | 30.00 | 35.00 |
| Charge attendants, men | 35.00 | 43.00 |
| Charge attendants, women | 30.00 | 35.00 |
| Attendants, men | 26.00 | 34.00 |
| Attendants, women | 19.00 | 25.00 |
| Special attendants, men | 43.00 | 50.00 |
| Special attendants, women | 35.00 | 43.00 |

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. An attendant or nurse performing night service for a period of one month succeeding the first day of the month shall be entitled to two dollars per month in addition to regular wages.

All attendants and all special attendants whether in immediate charge of patients or otherwise shall receive at least the wages designated in the above schedule.

5.

DOMESTIC SERVICE.

| Position | Wages per month | |
|-----------------------------------|-----------------|---------|
| | Minimum | Maximum |
| Housekeepers | \$35.00 | \$40.00 |
| Waitresses and chambermaids | 20.00 | 23.00 |

Increase of wages from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

6.

KITCHEN SERVICE.

| Position | Wages per month | |
|------------------------------|-----------------|---------|
| | Minimum | Maximum |
| Chefs, men ..... | .... | \$95.00 |
| Head cooks, men ..... | .... | 55.00 |
| Head cooks, women ..... | .... | 55.00 |
| Cooks, men ..... | .... | 35.00 |
| Cooks, women ..... | .... | 35.00 |
| Assistant cooks, women ..... | .... | 30.00 |
| Kitchen helpers, men | \$25.00 | 30.00 |
| Kitchen helpers, women | 18.00 | 25.00 |

The wages of kitchen helpers shall be increased from minimum to maximum at the rate of two dollars per month for each six months of continuous service.

| | | |
|-------|---------------------|-------------------|
| § 50. | Salaries and wages. | L. 1912, ch. 121. |
|-------|---------------------|-------------------|

7.

BAKERY SERVICE.

| Position | Wages per month | |
|-----------------------|-----------------|---------|
| | Minimum | Maximum |
| Baker | | \$68.00 |
| Assistant baker | | 45.00 |
| Bakers' helpers | | 35.00 |

8.

MEAT CUTTERS.

| Position | Wages per month | |
|--|-----------------|--|
| Meat cutters. Institutions having less than 2,000 patients | \$62.00 | |
| Meat cutters. Institutions having 2,000 or more patients | 68.00 | |

9.

LAUNDRY SERVICE.

| Position | Wages per month | |
|------------------------|-----------------|--|
| Laundry overseer | \$65.00 | |
| Launderers | 35.00 | |
| Head laundress | 35.00 | |
| Laundresses | 22.00 | |

10.

ENGINEER'S DEPARTMENT.

| Position | Wages per month | |
|--|-----------------|----------|
| | Minimum | Maximum |
| Chief engineer | | \$130.00 |
| Engineer's assistants, first grade | | 82.00 |
| Engineer's assistants, second grade | | 68.00 |
| Engineer's assistants, third grade | | 55.00 |
| Electrical engineer | | 100.00 |
| Electrical engineer's assistants, first grade | | 82.00 |
| Electrical engineer's assistants, second grade | | 68.00 |
| Electrical engineer's assistants, third grade | | 55.00 |
| Linemen | | 50.00 |
| Plumbers and steam fitters | | 78.00 |
| Plumbers and steam fitters' helpers | \$30.00 | 42.00 |
| Firemen, eight-hour shifts | | 45.00 |
| Firemen, twelve-hour shifts | | 65.00 |

Plumbers and steam fitters' helpers shall receive an increase from minimum to maximum at the rate of two dollars per month for each six months of continuous service.

| | | |
|-------------------|---------------------|--------|
| L. 1912, ch. 121. | Salaries and wages. | \$ 50. |
|-------------------|---------------------|--------|

11.

BUILDING DEPARTMENT.

| Position | Wages per month | |
|-----------------------------|-----------------|----------|
| | Minimum | Maximum |
| Master mechanic | | \$130.00 |
| Supervising carpenter | | 110.00 |
| Head carpenter | | 78.00 |
| Carpenters | | 68.00 |
| Painters | | 68.00 |
| Tinsmiths | | 68.00 |

12.

INDUSTRIAL DEPARTMENT.

| Position | Wages per month | |
|--------------------|-----------------|---------|
| | Minimum | Maximum |
| Shop foreman ..... | .... | \$64.00 |
| Tailor | \$55.00 | 64.00 |
| Shoemaker | 55.00 | 64.00 |

Increase of wages of tailor and shoemaker from minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service.

13.

FARM AND GROUNDS DEPARTMENT.

| Position | Wages per month | |
|-------------------|-----------------|---------|
| | Minimum | Maximum |
| Head farmer | \$64.00 | \$68.00 |
| Dairyman | 50.00 | 55.00 |
| Farmers | 35.00 | 43.00 |
| Herdsmen | 35.00 | 43.00 |
| Gardeners | 50.00 | 55.00 |
| Florists | 55.00 | 64.00 |
| Drivers ..... | .... | 33.00 |
| Laborers ..... | .... | 30.00 |
| Blacksmiths ..... | .... | 68.00 |

Increase of wages *for minimum to maximum shall be at the rate of two dollars per month for each six months of continuous service. (*Amended by L. 1912, ch. 43, in effect Apr. 1, 1913.*)

§ 58. Actions against state hospital commissioners, managers or officers of state hospitals.—No civil action shall be brought in any court against the

* So in original.

commission, or a state hospital commissioner, or an officer or a manager of a state hospital, for alleged damages because of any act done or failure to perform any act, while discharging his official duties, without leave of a judge of the supreme court, first had and obtained. Any just claim for damages against such commission or commissioner, officer, manager or employee for which the state would be legally or equitably liable, may be paid out of any moneys appropriated for the care of the insane. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 64. **Acquisition of property for use of state hospitals by condemnation and otherwise.**—The state hospital commission may acquire, under the condemnation law, such real estate, right or interest therein as may be necessary for the construction, maintenance and accommodation of a state hospital, if unable to agree with the owner thereof for its purchase. The proceedings for the purpose of acquiring such real estate, right or interest therein, shall be instituted and maintained in the name of the people of the state of New York, by the attorney-general or by such counsel as the governor or attorney-general may designate for that purpose, upon the certificate of such commission as to the necessity of acquiring such real estate, right or interest therein, approved and endorsed by the governor. The commission may acquire and hold in the name of and for the people of the state of New York, by grant, gift, devise or bequest, property to be applied to the maintenance of insane persons in and for the general use of a hospital. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 82. **Proceedings to determine the question of insanity.**—Any person with whom an alleged insane person may reside or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, or the next of kin available, or the committee of such person, or an officer of any well-recognized charitable institution or home, or any overseer of the poor of the town, or superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a statement of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person may reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing

with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith.

The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners.

Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately furnished with such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital.

The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state hospital commission. The relative, or committee, to whose care and custody any

insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission and procure and retain another such certified copy.

The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be admitted to any such institution under such order after the expiration of ten days from and inclusive of the date thereof. Notwithstanding the requirements of this section that an alleged insane person be duly committed by an order of the court, in a case where the condition of such person is such that it would be for his benefit to receive immediate care and treatment, or if he is dangerously insane so as to render it necessary for public safety that he be immediately confined, he shall be forthwith received by a state or licensed private institution authorized by law to care for the insane. In such case such insane person shall be so received by such institution upon a certificate of lunacy, executed by two medical examiners in lunacy after the examination and in the manner provided in the preceding section, and upon a petition made by the person authorized by this section to apply to a court for an order of commitment. By virtue of such certificate of lunacy and such petition such insane person may be retained in such institution for a period not to exceed ten days. Prior to the expiration of such time and order for his commitment must be obtained in the manner provided by this section. The certificate of lunacy executed by such physicians must contain adequate reasons why the insane person should be immediately received in an institution for the insane for treatment. The superintendent or person in charge of any such institution may refuse to receive such insane person upon such certificate and petition, if in his judgment the reasons stated in the certificate are not sufficient or the condition of the patient is not of such character, as to make it necessary that the patient should receive immediate treatment. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 86. Liability for the care and support of the insane other than the poor and indigent.

Priority of claim of State institution.—See *Matter of Schwartz* (1911), 145 App. Div. 285, 130 N. Y. Supp. 74.

By the provision of this section, that "In all claims of the State upon relatives liable for the support of a patient, or upon moneys or property held by said patient, the State shall be deemed a preferred creditor," it was not intended to prefer a claim of the State for the care and maintenance of a person who was insolvent when committed to a State hospital for the insane over the pre-existing debts of such person, as such provision must be read in connection with that part of said section which provides that "The father, mother, husband, wife and children of

an insane person, if of sufficient ability, and the committee or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained." The committee of the personal property of an incompetent, who is simply a bailee of the court, should distribute the property equitably among the creditors of the incompetent existing at the time she was so adjudicated; and a claim of the State for her care and maintenance in a State hospital for the insane which accrued prior to the institution of the accounting proceeding of the committee is not entitled to priority of payment under section 86 of the Insanity Law which applies to obligations and "money or property" held by the estate after there is really and equitably an estate, ascertained and determined by the marshaling of the assets and the payment of debts. *Matter of Taylor* (1912), 75 Misc. 157.

§ 87. Duties of local officers in regard to their insane.—All county superintendents of the poor, overseers of the poor, health officers and other city, town or county authorities, having duties to perform relating to the poor, are charged with the duty of seeing that all poor and indigent insane persons within their respective municipalities, are timely granted the necessary relief conferred by this chapter. The poor officers or authorities above specified, except in the city of New York and in the county of Albany, shall notify the health officer of the town, city or village of any poor or indigent insane or apparently insane person within such municipality whom they know to be in need of the relief conferred by this chapter. When so notified, or when otherwise informed of such fact, the health officer of the city, town or village, except in the city of New York and the county of Albany, where such insane or apparently insane person may be, shall see that proceedings are taken for the determination of his mental condition and for his commitment to a state hospital. Such health officer may direct the proper poor officer to make an application for such commitment, and, if a qualified medical examiner, may join in making the required certificate of lunacy. When so directed by such health officer it shall be the duty of the said poor officer to make such application for commitment. When notified or informed of any poor or indigent insane or apparently insane person in need of the relief conferred by this chapter, such health officer shall provide for the proper care, treatment and nursing of such person, as provided by law and the rules of the commission, pending the determination of his mental condition and his commitment and until the delivery of such insane person to the attendant sent to bring him to the state hospital, as provided in this chapter. In the boroughs of Manhattan and the Bronx, in the city of New York, it shall be the duty of the trustees of Bellevue and allied hospitals, and in the boroughs of Brooklyn, Queens and Richmond, in the city of New York and also in the county of Albany, it shall be the duty of the commissioner of public charities to see that all poor and indigent insane or apparently insane persons in such boroughs or county, respectively, are properly cared for and treated. It shall also be the duty of such trustees of Bellevue and allied hospitals, or the commissioner of public charities of the city of New York or the

county of Albany, to see that proceedings are taken for the determination of the mental condition of any such person in the boroughs or county mentioned, who comes under their observation or is reported to them as apparently insane, and when necessary, to see that proceedings are instituted for the commitment of such person to an institution for the care of the insane; provided that such report is made by any person with whom such alleged insane person may reside, or at whose house he may be, or by the father, mother, husband, wife, brother, sister, or child of any such person, or next of kin available, or by any duly licensed physician, or by any peace officer, or by a representative of an incorporated society doing charitable or philanthropic work. When the trustees of Bellevue and allied hospitals are thus informed of an apparently insane person, residing in the boroughs of Manhattan or the Bronx, or when the commissioner of public charities of the city of New York is thus informed of an apparently insane person residing in the boroughs of Brooklyn, Queens or Richmond, it shall be the duty of these authorities, respectively, to send a nurse or a medical examiner in lunacy, attached to the psychopathic wards of their respective institutions, or both, to the place where the alleged insane person resides or is to be found. If, in the judgment of the chief resident alienist of the respective psychopathic wards or of the medical examiner thus sent, the person is in immediate need of care and treatment or observation for the purpose of ascertaining his mental condition, he shall be removed to such psychopathic ward for a period not to exceed ten days, and the person or persons most nearly related to him, so far as the same can be readily ascertained by such trustees, or commissioner, shall be notified of such removal.

When an order of commitment has been made as provided in this chapter, such health officer, or, in the city of New York and in the county of Albany, the authorities above specified in their respective boroughs or county, shall see that such insane persons are, without unnecessary delay, transferred to the proper institutions provided for their care and treatment as the wards of the state. Before sending a person to any such institution, they shall see that he is in a state of bodily cleanliness and comfortably clothed with suitable or new clothing, in accordance with the regulations prescribed by the commission. Each patient shall be sent to the state hospital, within the district embracing the county from which he is committed, except that the commission may, in its discretion, direct otherwise, but private or public insane patients, for whom homeopathic care and treatment may be desired by their relatives, friends or guardians, may be committed to the Middletown State Homeopathic Hospital, or the Gowanda State Homeopathic Hospital, from any of the counties of the state, in the discretion of the judge granting the order of commitment; and the hospital to which any patient is ordered to be sent shall, by and under the regulations made by such commission, send a trained attendant to bring the patient to the hospital. Each female committed to any insti-

tution for the insane shall be accompanied by a female attendant, unless accompanied by her father, brother, husband or son. The commission may, by order, direct that any person it deems unsuitable therefor shall not be so employed or act as such attendant. After the patient has been delivered to the proper officers of the hospital, the care and custody of the municipality from which he is sent shall cease.

In no case shall any insane person be confined in any other place than a state hospital or duly licensed institution for the insane, for a period longer than ten days, nor shall such person be committed as a disorderly person to any prison, jail or lock-up for criminals. Except in the city of New York and the county of Albany, the health officer of the town, village or city wherein an insane or alleged insane person may be shall see that such person is cared for in a place suitable for the comfortable, safe and humane confinement of such person, pending the determination of the question of his sanity and until his transfer to a state hospital or some other proper institution for the insane as provided in this chapter. Such person shall not be confined in any such place without an attendant in charge of him, and the said health officer shall select some suitable person to act as such attendant.

The proper authorities of any such town, city or county may provide a permanent place for the reception and temporary confinement, care and nursing of insane or alleged insane persons which shall conform in all respects to the rules and requirements of the commission; all poor and indigent insane persons received at any such place for investigation of their mental condition or pending commitment and transfer to a state hospital shall be maintained therein at the expense of such town, city or county. Any person apparently insane, and conducting himself in a manner which in a sane person would be disorderly, may be arrested by any peace officer and confined in some safe and comfortable place until the question of his sanity be determined, as prescribed by this chapter. The officer making such arrest shall immediately notify the health officer of the town, village or city, except in the city of New York and in the county of Albany, who shall forthwith take proper measures for the determination of the question of the insanity of such person, and for his proper care and treatment as provided in this section, pending his transfer to an institution for the insane. Whenever in the city of New York an information is laid before a magistrate that a person is apparently insane the magistrate must issue a warrant directed to the sheriff of the county in which the information is made, or any marshal or policeman of the city of New York, reciting the substance of the information, and commanding the officer forthwith to arrest the person alleged to be insane, and bring him before the magistrate issuing the warrant. If upon arraignment it appears to the magistrate issuing the warrant that the person so arraigned before him is apparently insane it shall be the duty of the magistrate, if such information is laid in the boroughs of Manhattan and the

Bronx, to commit such apparently insane person to the care and custody of the board of trustees of Bellevue and allied hospitals at Bellevue hospital, and therein kept in a safe and comfortable place until the question of his sanity be determined as prescribed by this chapter, and in the boroughs of Brooklyn, Queens and Richmond the said magistrate shall commit such apparently insane person to the care of the commissioner of public charities who shall keep such person in a safe and comfortable place until the question of his sanity be determined as herein prescribed. Whenever in the city of New York a person is committed as apparently insane as above provided it shall be the duty of the board of trustees of Bellevue and allied hospitals or the commissioner of public charities, as the case may be, to forthwith take proper measures for the determination of the question of the insanity of such person. (*Amended by L. 1910, ch. 608 and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 88. **Duty of committee and others to care for the insane; apprehension and confinement of a dangerous insane person.**—When an insane person is possessed of sufficient property to maintain himself, or his father, mother, husband, wife or children are of sufficient ability to maintain him, and his insanity is such as to endanger his own person, or the person and property of others, the committee of his person and estate, or such father, mother, husband, wife or children must provide a suitable place for his confinement, and there maintain him in such manner as shall be approved by the health officer of the town, village or city where he is confined, and in accordance with the rules of the commission. The health officers of towns, villages and cities, or in the boroughs of Manhattan and the Bronx in the city of New York the board of trustees of Bellevue and allied hospitals, and in the boroughs of Brooklyn, Queens and Richmond in said city, and also in the county of Albany, the commissioner of public charities are required to see that the provisions of this section are carried into effect in the most humane and speedy manner.

Upon the refusal or neglect of a committee, guardian or relative of an insane person to cause him to be confined, as required in this chapter, the officers named in this section shall apply, or cause application to be made, to a judge of a court of record of the city or county, or to a justice of the supreme court of the judicial district in which such insane person may reside or be found, who, upon being satisfied, upon proper proofs, that such person is dangerously insane and improperly cared for or at large, shall issue a precept to one or more of the officers named, commanding them to apprehend and confine such insane person in some comfortable and safe place; and such officers in apprehending such insane person shall possess all the powers of a peace officer executing a warrant of arrest in a criminal proceeding. Unless an order of commitment has been previously granted, such officers shall forthwith make, or cause to be made, application for the proper order for his commitment to the proper institution for the

L. 1912, ch. 121.

Discharge of patients.

§§ 89, 94.

care, custody and treatment of the insane, as authorized by this chapter, and if such order is granted, such officer shall take the necessary legal steps to have him transferred to such institution. Pending such transfer the health officer of the proper town, village or city, and, in the city of New York and the county of Albany, the officers above named for the respective boroughs, or county, shall see that such insane person is cared for in a suitable place and is provided with proper medical care and nursing. The cost and expense incurred by the health officer in the performance of his duties under this section shall, when allowed by the judge or justice ordering the commitment, be a charge against the town, city or county liable for the costs of the commitment of an insane person under this chapter and shall be paid in the manner prescribed by section eighty-four of this chapter. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

Where the insane person is, or has responsible relatives, of sufficient ability to maintain him, the State Commission in Lunacy and the Local Health Officer, having upon inquiry concluded that he is being improperly cared for, may apply to a judge of a court of record for his commitment to a State Hospital for the Insane. The expense, fees and compensation in the performance of these duties shall be allowed by the judge before whom the application is heard. Rept. of Atty. Genl., Feb. 7, 1912.

Justification for apprehension.—The statute must be given a reasonable construction, and was undoubtedly intended to cover cases where violence might be done before a warrant could be obtained. Of course the commitment must be made by a judicial officer. Plaintiff's conduct held to justify apprehension and commitment, and such action not to constitute false imprisonment. *Cahill v. Michaelis*, 170 Fed. 66 (1909).

§ 89. **Patients admitted under special agreement.**—The commission may authorize the superintendent of a state hospital to admit thereto, under special agreement, insane patients, who are residents of the state, other than poor and indigent insane persons, when there is room for such insane therein. But no patient shall be permitted to occupy more than one room in any state hospital. Such patients, when so received, shall be subject to the general rules and regulations of the hospital. The commission shall fix the rates to be charged for the maintenance of such insane persons in a state hospital, the payment of which shall be secured by a surety company bond, which shall be approved by the commission, and bills therefor shall be collected monthly. The superintendent may recommend to the commission the removal of such insane patients to duly licensed private institutions and the commission shall have power in its discretion to compel such removal. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 94. **Discharge of patients.**—The superintendent of a state hospital, on filing his written certificate with the commission, may discharge any patient, except one held upon an order of a court or judge having criminal

jurisdiction in an action or proceeding arising out of a criminal offense at any time, as follows:

1. A patient who, in his judgment, is recovered.
2. A patient who, in his opinion, is a dotard, not insane.
3. Any patient who is not recovered but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient; provided, however, that before making such certificate, the superintendent shall satisfy himself, by sufficient proof, that friends or relatives of the patient are willing and financially able to receive and properly care for such patient after his discharge.

When the superintendent is unwilling to certify to the discharge of an unrecovered patient upon request, and so certifies in writing, giving his reasons therefor, any judge of a court of record in the judicial district in which the hospital is situated may, upon such certificate and an opportunity of a hearing thereon being accorded the superintendent, and upon such other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require, for the good behavior and maintenance of the patient. The certificate and the proof and the order granted thereon shall be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged. The superintendent may grant a parole to a patient not exceeding six months, under general conditions prescribed by the commission. The hospital paroling a patient shall not be liable for his expenses while on parole. Such liability shall devolve upon the relative, committee or person to whose care the patient is paroled, or the proper poor official of the town or county in which he may have found domicile.

The commission may, by order, discharge any patient in its judgment improperly detained in any institution. A poor and indigent patient discharged by the superintendent because he is an idiot, or a dotard not insane, or an epileptic, not insane, or because he is not a proper case for treatment within the meaning of this chapter, shall be received and cared for by the superintendent of the poor, or other authority having similar powers, in the county from which he was committed. A patient, held upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising from a criminal offense, may be discharged upon the superintendent's certificate of recovery, approved by any such court or judge.

4. Discharge of patients from licensed institutions. The superintendent or physician in charge of a licensed private institution, on filing his written certificate with the commission, may discharge any patient who is recovered, or if not recovered, whose discharge will not be detrimental to the public welfare, or injurious to the patient. The superintendent or physician in charge of such institution may, subject to the approval of the commission, refuse to discharge any patient, if, in his judgment, such

discharge will be detrimental to the public welfare or injurious to the patient, and if the committee or relatives of such patient refuse to provide properly for his care and treatment, the superintendent or physician in charge of such institution may apply to the commission for the transfer of the patient to a state hospital, provided the patient so sought to be transferred is a legal resident of the district in which the hospital is located, to which the transfer is sought.

The superintendent or physician in charge of a licensed private institution may grant a parole to a patient not exceeding six months, under general conditions prescribed by the commission. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

Discharge of a patient who is not poor or indigent.—The State Commission in Lunacy may, by order, discharge from a State Hospital a patient committed as a poor or indigent insane person, but who or whose committee has, in fact, sufficient property to properly and suitably care for and maintain said insane person. Rept. of Atty. Genl., Jan. 26, 1912.

§ 99. Voluntary patients in state hospitals and licensed private institutions.—Pursuant to rules and regulations established by the commission, the superintendent or person in charge of any state hospital or licensed private institution for the care and treatment of the insane, except the Matteawan and Dannemora state hospitals, may receive and retain therein as a patient any person suitable for care and treatment, and who voluntarily makes written application therefor, and whose mental condition is such as to render him competent to make such application. A person thus received at such hospital or institution shall not be detained under such voluntary agreement more than ten days after having given notice in writing of his intention or desire to leave such hospital or institution. The superintendent or physician in charge of a state hospital shall, within three days after the admission of a patient by such voluntary agreement, forward to the office of the commission, the record of such patient in accordance with the provisions of section fifteen of this chapter, and such rules and regulations as may be established by the commission.

The superintendent or physician in charge of a licensed private institution for the care and treatment of the insane shall furnish the medical commissioner or the medical inspector a complete list of all voluntary cases received since the last visit of such commissioner or inspector. It shall be the duty of such commissioner or inspector to examine such cases and determine if they belong to the voluntary class, and the decision as to commitment or discharge shall be forthwith complied with by the superintendent or physician in charge of such institution. Any failure to conform to the requirements of this section shall be considered a sufficient cause for revocation of the license. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

ARTICLE V.

[Article added by L. 1912, ch. 59, in effect Mch. 22, 1912.]

RETIREMENT OF STATE HOSPITAL EMPLOYEES.

- Section 110. Retirement fund created; custody and control.
- 111. Retirement of employees.
 - 112. Proceedings for retirement; annuities paid.
 - 113. Retirement for disability caused by injury.
 - 114. Term of service; how computed.
 - 115. Contributions to retirement fund.
 - 116. Repayments where retirement is without fault of employee; payments in case of death.
 - 117. Payment in case of dismissal.
 - 118. Temporary employees.
 - 119. Retirement board created.
 - 120. Medical examiners.
 - 121. Application blanks.
 - 122. Expenses of administration.

§ 110. Retirement fund created; custody and control.—A permanent fund for the payment of annuities to employees of the New York state hospitals for the insane in the employ of the state of New York is hereby established, such fund to consist of moneys that may be paid in by those entitled to the benefits of the provisions of this section as hereinafter provided; moneys received from donations, gifts and bequests; moneys received from deductions for leave of absence without pay, deductions for sickness, and from other sources. The treasurer or other officer of any state hospital who collects or receives moneys, hereby declared to be part of such fund, shall pay to the comptroller of the state of New York, who shall place the same in such fund, which shall be invested by him and the money received from interest thereon shall be credited to said fund. All moneys belonging to the fund herein provided for shall be received by the comptroller of the state of New York who shall have charge of the administration thereof, and who shall pay therefrom the annuities, payable quarterly throughout life, or other benefits that may become due and payable hereunder. But no salaries for the administration of the fund are to be paid from such funds. The retirement board hereinafter provided for, shall from time to time establish such reasonable rules and regulations for the administration and investment of such fund as will insure the perpetuation thereof. The comptroller of the state of New York shall report annually to the retirement board hereinafter provided the condition of said fund in detail, giving all items of receipt and disbursements and his recommendation in regard thereto. (*Added by L. 1912, ch. 59, in effect Mch. 22, 1912.*)

§ 111. Retirement of employees.—Any employee of the New York state hospitals for the insane, including the Matteawan and Dannemora hospitals

for criminal insane, who shall have signified his or her intention to take advantage of this act and who shall faithfully and honestly discharge his or her duty in one or more of such state hospitals, or in any former city or county asylum, now a state hospital for the insane, or partly in each, for twenty-five years, shall upon his or her application to the retirement board hereinafter provided be entitled to retirement. Provided, however, in the opinion of the retirement board herein created there is sufficient money in the fund to warrant such retirement. Any person retired pursuant to the provisions of this section must be awarded, granted and paid from said retirement fund an annual amount equal to one-half of the salary or compensation, including maintenance, as fixed by the state commission in lunacy or by statute received by him or her, for the year immediately preceding the application or notice for retirement, provided however, that no person shall receive such annuity until he or she shall have paid into the said fund, by deductions from his or her salary, or otherwise, an amount equal to fifty per centum of his or her first year's annuity. Such annuity shall be for the natural life of such person and payable in quarterly installments, and shall not be revoked, repealed, diminished or subject to claim of creditors. (*Added by L. 1912, ch. 59, in effect Mch. 22, 1912.*)

§ 112. **Proceedings for retirement; annuities paid.**—The retirement board hereinafter provided for shall have power upon its own motion or upon the application in writing of any person entitled to the benefit of the retirement fund to retire any such person who shall have faithfully performed duty for fifteen years or more, and who shall have become mentally or physically incapacitated by reason of accident or illness, provided, however, that reasonable notice in writing, shall be given by the board or one of its members of its proposed action, to the person intended to be retired and an opportunity afforded to such person to be heard before the final action is taken by said board, and said board shall certify in writing the reason for such retirement, and that the best interests of the public service demand the same. To aid in such determination, the board may cause the person intended to be retired, to be physically examined by the medical examiners hereinafter provided for. Any person retired pursuant to the provisions of this section must be awarded, granted and paid from said retirement fund an annual amount equal to as many twenty-fifths of one-half of the salary or compensation, including maintenance received by him or her for the year immediately preceding the application for retirement as he or she has served years, provided, however, that no person shall receive such annuity until he or she shall have paid into said fund by deductions from his or her salary or otherwise an amount equal to fifty per centum of his or her first year's annuity. Such annuity shall be for the natural life of such person, payable in quarterly installments and shall not be revoked, repealed, diminished or subjected to the claims of creditors. (*Added by L. 1912, ch. 59, in effect Mch. 22, 1912.*)

§ 113. **Retirement for disability caused by injury.**—Any employee of a New York state hospital for the insane who shall have signified his or her intention to take advantage of this act and who upon the report of the medical examiner hereinafter provided for to the retirement board, has become permanently disabled by reason of an injury received in the line of duty or at the hands of a patient of any New York state hospital for the insane and incapacitated for performing the duties of the position, shall be retired with such allowances as under the circumstances may appear fitting to the retirement board hereinafter provided for, independently of length of service, but such allowance shall not be less than ten twenty-fifths of one-half of the salary, including maintenance, provided, however, that no person shall receive such annuity until he or she shall have paid into the said fund by deductions from his or her salary or otherwise an amount equal to fifty per centum of his or her first year's annuity. Such annuity shall be for the natural life of such person, payable in quarterly installments, and shall not be revoked, repealed, diminished or subject to the claim of creditors. (*Added by L. 1912, ch. 59, in effect Mch. 22, 1912.*)

§ 114. **Term of service; how computed.**—The term of service of an employee of the New York state hospitals for the insane shall be computed according to the time such person was upon the pay-roll of any state hospital or any city or county asylum now a New York state hospital for the insane. Except the period of time during which any employee is exempt from the provisions of this act shall not be considered in computing his or her time of service. (*Added by L. 1912, ch. 59, in effect Mch. 22, 1912.*)

§ 115. **Contributions to retirement fund.**—Every employee of the New York state hospitals for the insane who shall have signified his or her intention to take advantage of this act shall contribute to said fund and the comptroller of the state of New York shall at the end of the first full calendar month after this act takes effect deduct and retain monthly from the salary and maintenance of such persons and pay into the said fund amounts as follows: Persons who have performed such duty for less than five years, one per centum. Persons who have performed such duty for more than five years and less than ten years, one and one-half per centum. Persons who have performed such duty for more than ten years and less than fifteen years, two per centum. Persons who have performed such duty for more than fifteen years and less than twenty years, two and one-half per centum. Persons who have performed such duty for more than twenty years, three per centum. Such payments shall cease when a person has paid for twenty-five years, or who has been retired pursuant to the provisions of this act. Every person to whom this article applies who shall have signified his or her intention to take advantage of this act, who shall continue in the employ of the New York state hospitals for the insane after this article takes effect, as well as every person to whom this article applies who may hereinafter be appointed to a position or place, shall be

L. 1912, ch. 59.

Retirement of state hospital employees.

§§ 116-120.

deemed to consent and agree to the deductions made and provided for herein, and shall receipt in full for the salary, pay or compensation which shall be paid monthly or at any other time, and such payment shall be a full and complete discharge and acquittance of all claims or demands whatsoever for the services rendered by such person during the period covered by such payment, notwithstanding the provisions of any other law, rule or regulation affecting the salary, pay or compensation of any person or persons employed in the New York state civil service to whom this act applies. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 116. **Repayments where retirement is without fault of employee; payments in case of death.**—Any person who has not become entitled to a retirement allowance, who loses his office or employment by reason of reduction of staff or any change due to the action of the hospital authorities, and not owing to his own default or misconduct, shall be entitled to receive on retirement the aggregate amount of his contribution to the fund or funds from which the retirement allowances are to be paid, together with interest thereon at the rate of four per centum per annum, and shall not be entitled to any further benefit under this article. In case of death of an employee who has made at least two payments, his estate shall either be reimbursed in the amount contributed by him, or in such sum as the retirement board may deem proper. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 117. **Payment in case of dismissal.**—A person, who has contributed to this fund for a period of not less than ten years, or a person whose length of service would entitle him otherwise to be retired within ten years, and who has contributed to this fund from the time it goes into effect, shall, in the event of dismissal from the service, have the right to appeal for a review of the facts to the retirement board, whose decisions shall be final. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 118. **Temporary employees.**—The retirement board hereinafter provided shall exclude from the operation of this act any group of employees who receive their compensation on a temporary pay-roll and whose tenure of office is intermittent or of uncertain duration. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 119. **Retirement board created.**—The retirement board hereinbefore mentioned, shall be composed of the comptroller of the state of New York, the president and the legal member of the New York state commission in lunacy, which board shall have general jurisdiction over and authority to pass upon all questions that may arise under the provisions of this article. (*Added by L. 1912, ch. 59 and amended by L. 1912, ch. 283, in effect Apr. 11, 1912.*)

§ 120. **Medical examiners.**—The retirement board may appoint one or

§§ 121, 122, 130.

Matteawan State Hospital.

L. 1912, ch. 59.

more boards of medical examiners hereinbefore mentioned, each of which boards shall be composed of not less than three physicians connected with the New York state hospital service, to conduct examinations. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 121. **Application blanks.**—All applications for retirement shall be made to the retirement board upon blanks to be provided for that purpose and shall be acted upon by said board within ninety days from the receipt thereof in order of such receipt. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

§ 122. **Expenses of administration.**—The expense of such accounting and clerical work as shall be necessary in computing the payments to be made under the annuity system created by this article, in so far as such accounting and clerical work is not performed at the respective hospitals involved, shall be paid for out of the retirement fund established by this article.

Any employee who is exempt from the provision of this act shall be reinstated to the provisions of this act by notifying the retirement board in writing of his or her desire to be so reinstated. Any person who does not notify the retirement board in writing within thirty days after this act goes into effect shall be deemed to have signified his or her intention to take advantage of the provisions of this act. (*Added by L. 1912, ch. 59, in effect Apr. 3, 1912.*)

Article 5, §§ 110–125, Matteawan Hospital. Renumbered Article 6, §§ 130–145, by L. 1912, ch. 59, in effect Mch. 22, 1912.

Article 6, §§ 140–153, Dannemora State Hospital. Renumbered Article 7, §§ 150–163 by L. 1912, ch. 59, in effect Mch. 22, 1912.

Article 7, Psychiatric Institute. Renumbered Article 8 by L. 1912, ch. 59, in effect Mch. 22, 1912.

Article 8. Laws repealed; when to take effect. Renumbered Article 9 by L. 1912, ch. 59, in effect Mch. 22, 1912.

§ 130. [*Formerly § 110; renumbered 130 by L. 1912, ch. 59.*] **Establishment and purposes of the Matteawan State Hospital.**—The grounds, buildings and property located at Matteawan, in the county of Dutchess, and used for the purpose of the hospital for insane criminals, shall continue to be known as the Matteawan State Hospital, to be used for the purpose of holding in custody and caring for such insane persons held under any other than a civil process as may be committed to the said institution by courts of criminal jurisdiction, or transferred thereto by the state hospital commission, and for such convicted persons as may be declared insane while undergoing sentence of one year or less or for a misdemeanor at any of the various penal institutions of the state, and for all female convicts becoming insane while undergoing sentence. When a person is committed to the Matteawan State Hospital under the provisions of article eight, chapter five, section six hundred and fifty-nine; or title four, chapter two, section eight hundred and thirty-six of the code of criminal procedure—

L. 1912, ch. 121.

Matteawan State Hospital.

§§ 134, 135.

a copy of the minutes of the proceedings instituted to determine his mental condition shall be furnished to said hospital. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

A convicted person declared insane while undergoing three separate sentences of one year each for petit larceny may be committed to and received at the Matteawan State Hospital. Rept. of Atty. Genl., Mch. 22, 1912.

§ 134. [*Formerly § 114; renumbered 134 by L. 1912, ch. 59.*] **Salaries of resident officers.**—The superintendent of state prisons shall, from time to time, determine the annual salaries and allowances of the resident officers, and the same shall be paid in accordance with chapter three hundred and seventeen of the laws of nineteen hundred and ten, twice each month on the first and sixteenth days thereof by the treasurer of the state, on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated, to the medical superintendent, on his presenting a bill of particulars thereof signed by the steward, and properly certified by such medical superintendent. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 135. [*Formerly § 115; renumbered 135 by L. 1912, ch. 59.*] **Powers and duties of medical superintendent and assistants.**—The medical superintendent shall be the chief executive officer of the hospital and shall:

1. Have the general superintendence of the building and grounds, together with their furniture, fixtures and stock, and the direction and control of all persons therein, subject to the rules and regulations adopted by the superintendent of state prisons, with power to assign their respective duties.

2. Appoint such number of assistant physicians, as the necessities of the institution may require, subject to the approval of the superintendent of state prisons, also a steward and matron, all of whom and the medical superintendent, shall reside in the hospital, and shall be known as the resident officers thereof.

3. Appoint such and so many attendants and other subordinate employees as he may think proper and necessary for the economical and efficient administration of the affairs of the hospital, and prescribe their several duties and places, and fix, with the approval of the superintendent of state prisons, their compensation, and discharge any of them at his sole discretion; but in every case of discharge, so occurring, he shall, forthwith, enter the same with the reasons therefor, under an appropriate heading, in one of the record books of the hospital.

4. Give, from time to time, such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

5. Maintain salutary discipline among all who are employed by the institution, and enforce strict compliance with all instructions and orders given by him, and uniform obedience to all the rules and regulations of the hospital.

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution to be kept regularly, from day to day, in books provided for that purpose, in the manner and to the extent prescribed in the by-laws.

7. See that all accounts and records are fully made up to the last day of September in each year, and present the principal facts and results, with his report thereon, to the superintendent of state prisons, within forty days thereafter. The resident officers, before entering upon their duties as such, shall severally take and file in the office of the secretary of state, the constitutional oath of office. The first assistant physician shall perform the duties and be subject to the responsibilities of the superintendent in his sickness or absence. The steward may personally purchase any supplies for the use of such hospital, but only in the name of the medical superintendent, and in each instance by his direction and not otherwise. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 139. [*Formerly § 119; renumbered 139 by L. 1912, ch. 59.*] **Disposal of insane convicts after expiration of term of imprisonment.**—Whenever any convict in the Matteawan State Hospital, under and by virtue of this chapter, shall continue to be insane at the expiration of the term for which he was sentenced, he may be retained therein until he has recovered or is otherwise legally discharged. The medical superintendent of such hospital may discharge and deliver any patient whose sentence has expired, and who is still insane, but who in the opinion of the superintendent is reasonably safe to be at large, to his relatives or friends who are able and willing to comfortably maintain him, without further public charge; and such patient may, in the discretion of the medical superintendent, be provided with the whole or a portion of such allowances as are hereinafter granted to recovered convicts. Whenever any convict, who, by reason of his insanity, shall have been retained beyond the date of the expiration of his sentence shall recover, he may be discharged by the medical superintendent, and such convict shall be entitled to ten dollars in money, suitable clothing and a railroad ticket to the county of his conviction or to such other place as he may designate at no greater distance. Any convict in the Matteawan State Hospital, whose term of imprisonment has expired by commutation or otherwise, and who is not recovered, may, upon an order of the state hospital commission, be transferred to any institution for the insane. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 142. [*Formerly § 122; renumbered 142 by L. 1912, ch. 59.*] **Transfers from state hospitals to Matteawan State Hospital.**—The commission may, by order in writing, transfer to the Matteawan State Hospital, any insane inmate of a state hospital, who was held under any other than a civil process, committed thereto upon the order of a court of criminal jurisdiction or of a judge or justice of such a court; or any patient who has previously been sentenced to a term of imprisonment in any penal institution,

L. 1912, ch. 121.

Dannemora State Hospital.

§§ 143, 150, 152, 154, 155.

and who still manifests criminal tendencies, or any such patient who has previously been an inmate of the Matteawan State Hospital. All persons committed to said Matteawan State Hospital shall be a charge upon the state. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 143. [*Formerly § 123; renumbered 143 by L. 1912, ch. 59.*] **Authority to recover for support of patients.**—(*Repealed by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 150. [*Formerly § 140; renumbered 150 by L. 1912, ch. 59.*] **Establishment and purposes of the Dannemora State Hospital.**—The grounds and property located at Dannemora, in the county of Clinton, and the buildings erected thereon, shall be known as the Dannemora State Hospital. Such hospital shall be used for the purpose of confining and caring for such male prisoners as are declared insane while confined in a state prison, reformatory, or penitentiary, who has been sentenced thereto for a felony. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 152. [*Formerly § 142; renumbered 152 by L. 1912, ch. 59.*] **Medical superintendent.**—The superintendent of state prisons shall, whenever there is a vacancy, appoint a medical superintendent for the Dannemora State Hospital, who shall be a well educated physician and a graduate of an incorporated medical college of at least five years' actual experience in a hospital for the care and treatment of the insane. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 154. [*Formerly § 144; renumbered 154 by L. 1912, ch. 59.*] **Salaries of resident officers.**—The superintendent of state prisons shall, from time to time, determine the annual salaries and allowances of the resident officers, and the same shall be paid by the treasurer of the state, on the warrant of the comptroller, out of any moneys in the treasury appropriated for that purpose, to the medical superintendent, on his presenting a bill of particulars thereof, signed by the steward, and properly certified by such medical superintendent. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 155. [*Formerly § 145; renumbered 155 by L. 1912, ch. 59.*] **Powers and duties of medical superintendent and assistants.**—The medical superintendent shall be the chief executive officer of the hospital and shall:

1. Have the general superintendence of the building and grounds, together with their furniture, fixtures and stock, and the direction and control of all persons therein, subject to the rules and regulations adopted by the superintendent of state prisons, with power to assign their respective duties.

2. Appoint such number of assistant physicians as the necessities of the institution may require, and a steward, all of whom and the medical superintendent, shall, as soon as accommodations are provided, reside on the hospital grounds, and shall be known as the resident officers of the hospital.

3. Appoint such and so many attendants and other subordinate employees as he may think proper and necessary for the economical and efficient administration of the affairs of the hospital, and prescribe their several duties and places, and fix, with the approval of the superintendent of state prisons, their compensation, and discharge any of them at his sole discretion; but in every case of discharge, so occurring, he shall, forthwith, enter the same with the reasons therefor, under an appropriate heading, in one of the record books of the hospital.

4. Give, from time to time, such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

5. Maintain salutary discipline among all who are employed by the institution, and enforce strict compliance with all instructions and orders given by him, and uniform obedience to all the rules and regulations of the hospital.

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, to be kept regularly, from day to day, in books provided for that purpose, in the manner and to the extent prescribed in the by-laws.

7. See that all accounts and records are fully made up to the last day of September in each year, and present the principal facts and results, with his report thereon, to the superintendent of state prisons, within forty days thereafter. The resident officers, before entering upon their duties as such, shall severally take and file in the office of the secretary of state, the constitutional oath of office. The first assistant physician shall perform the duties and be subject to the responsibilities of the superintendent in his sickness or absence. The steward may personally purchase any supplies for the use of such hospital, but only in the name of the medical superintendent, and in each instance by his direction and not otherwise. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 158. [*Formerly § 148; renumbered 158 by L. 1912, ch. 59.*] **Transfer of prisoners in state prisons, reformatories and penitentiaries to Dannemora State Hospital.**—Whenever the physician of any one of the state prisons, reformatories or penitentiaries shall certify to the warden or superintendent thereof, that a male prisoner confined therein and sentenced thereto for a felony, is, in his opinion, insane, such warden or superintendent shall cause such prisoner to be transferred to the Dannemora State Hospital and delivered to the medical superintendent thereof. Such superintendent shall receive the prisoner into such hospital, and retain him there until legally discharged. The warden or superintendent, before transferring such insane prisoner, shall see that he is in a state of bodily cleanliness, and is provided with a new suit of clothing similar to that furnished to convicts on their discharge from prison. At the time of such transfer, there shall be transmitted to the medical superintendent of such hospital the original

L. 1912, ch. 121.

Dannemora State Hospital.

§§ 159, 160.

certificate of conviction and the certificate of insanity executed by the physician, which shall be filed in the office of such medical superintendent, who shall file a notice of such transfer in the office of the superintendent of state prisons. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 159. [*Formerly § 149; renumbered 159 by L. 1912, ch. 59.*] **Retention of insane convicts after the expiration of their terms.**—When the term of a convict confined in Dannemora State Hospital has expired, and, in the opinion of the medical superintendent, such convict continues insane, the medical superintendent shall apply to a judge of a court of record to cause an examination to be made of such person, by two legally qualified examiners in lunacy, other than a physician connected with such hospital, qualified to act as medical examiners in lunacy. Such examiners shall be designated by the judge to whom the application is made. Such examiners, if satisfied, after a personal examination, that such convict is insane, shall make a certificate to such effect in the form and manner prescribed by article three of this chapter, for the commitment of insane persons to state hospitals. Such superintendent shall apply to a judge of a court of record for an order authorizing him to retain such convict at the Dannemora State Hospital, accompanying such application with such certificate in lunacy. Such judge, if satisfied that such convict continues insane, shall issue such order of retention, and such superintendent shall thereupon retain the convict at Dannemora State Hospital until discharged as provided by law. The certificate in lunacy and order of retention shall be kept by the medical superintendent in his office, and a copy thereof shall be filed in the office of the state hospital commission. The costs necessarily incurred by determining the question of insanity, including the fees of the medical examiners, shall be a charge upon the amount appropriated for the support and maintenance of the Dannemora State Hospital, and be paid in the same manner as are other expenses of such hospital. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 160. [*Formerly § 150; renumbered 160 by L. 1912, ch. 59.*] **Discharge of insane convicts after expiration of terms.**—The medical superintendent of the Dannemora State Hospital may discharge and deliver any patient whose sentence has expired, and who is still insane, but who, in the opinion of the superintendent, is reasonably safe to be at large, to his relatives or friends who are able and willing to comfortably maintain him, without further public charge; and such patient may, in the discretion of the medical superintendent, be provided with the whole or a portion of such allowances as are hereinafter granted to recovered convicts. Whenever any convict, who, by reason of his insanity, shall have been retained beyond the date of the expiration of his sentence, shall recover, he may be discharged by the medical superintendent, and such convict shall be entitled to ten dollars in money, suitable clothing and a railroad ticket to the county of his conviction or to such other place as he may designate

§§ 162, 163, 171, 172.

Psychiatric Institute.

L. 1912, ch. 121.

at no greater distance. Any convict in the Dannemora State Hospital, whose term of imprisonment has expired by commutation or otherwise, and who is not recovered, may, upon an order of the state hospital commission, be transferred to any institution for the insane. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 162. [*Formerly § 152; renumbered 162 by L. 1912, ch. 59.*] **Certificate of conviction to be delivered to medical superintendent and copy filed.**—Whenever a convict is transferred to the Dannemora State Hospital, the warden or superintendent in charge of the prison, penitentiary or reformatory from which such convict is transferred, shall cause a copy of the original certificate of conviction of such convict to be filed in the office of such warden or superintendent, and shall deliver the original certificate to the medical superintendent of such hospital; and whenever any such convict shall be transferred to any penal institution, from such hospital, as hereinbefore provided, the medical superintendent shall deliver to the warden, or superintendent in charge of such institution, such original certificate, which shall be filed in the clerk's office of the same. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 163. [*Formerly § 153; renumbered 163 by L. 1912, ch. 59.*] **Communications with patients.**—No person not authorized by law or by written permission from the superintendent of state prisons shall visit the Dannemora State Hospital, or communicate with any patient therein, without the consent of the medical superintendent; nor without such consent shall any person bring into or convey out of the Dannemora State Hospital any letter or writing to or from any patient; nor shall any letter or writing be delivered to a patient, or if written by a patient, be sent from the Dannemora State Hospital, until the same shall have been examined and read by the medical superintendent or some other officer of the hospital duly authorized by the medical superintendent. But communications addressed by such patient to the county judge or district attorney of the county from which he was sentenced, shall be forwarded, after examination by such medical superintendent, to their destination. (*Amended by L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 171. **Maintenance of institute.**—Such institute shall be maintained by the commission as part of the state hospital system, from appropriations obtained for such purpose. (*Amended by L. 1910, ch. 289 and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

§ 172. **Director of institute; residence and maintenance of staff.**—The director of such institute shall be appointed by the commission, after a special civil service examination therefor. He shall perform, under the direction of the commission, such duties relating to psychiatric and pathological research and the instruction of medical staffs of the several state hospitals, and such other duties as may be required by the commission. He

L. 1912, ch. 121.

Psychiatric Institute.

§ 172.

shall have the supervision and control of such institute and of the physicians and others employed therein, subject to the general direction, supervision and control of the commission as provided in this article. He shall receive an annual salary to be fixed by the commission, subject to the approval of the governor. The state hospitals shall co-operate with the institute in such manner as the commission may from time to time direct. The director shall reside and have his office upon Ward's Island, New York city, and he shall be furnished a residence and maintenance for himself and family as provided by law in the case of the superintendents of state hospitals. The physicians of the staff of such institute shall, if required by the commission, reside upon Ward's Island, and shall be furnished with rooms and maintenance as provided by law for assistant physicians in state hospitals. (*Amended by L. 1910, ch. 289 and L. 1912, ch. 121, in effect Apr. 3, 1912.*)

INSURANCE LAW.

(L. 1909, ch. 33.)

§ 1. **Short title and application.**—This chapter shall be known as the “insurance law,” and shall be applicable to all persons, partnerships, corporations, associations and societies and to associations operating as Lloyds, interinsurers or individual underwriters, authorized by law to make insurances. (*Amended by L. 1912, ch. 265, in effect Apr. 11, 1912.*)

§ 2. **The superintendent of insurance.**—There shall continue to be a separate and distinct department charged with the execution of the laws relating to insurance, to be known as the insurance department, the chief officer of which shall be the superintendent of insurance who shall be appointed by the governor, by and with the advice and consent of the senate, and, unless appointed to fill a vacancy, shall hold his office for the term of three years, beginning on the first day of July succeeding his appointment, and ending on the first day of July in the third calendar year thereafter; provided that the term of office of the superintendent appointed to succeed the superintendent who was in office on the first day of January, nineteen hundred and twelve, shall continue until the first day of July, nineteen hundred and fifteen. A vacancy in such office shall be filled only for the balance of the unexpired term. The superintendent shall receive an annual salary of ten thousand dollars, which shall be in full of all services performed by him in any capacity.

The superintendent and his deputies shall take and subscribe and file in the office of the secretary of state the constitutional oath of office within fifteen days from the time of notice of their appointments, respectively. The superintendent shall, within the same time, give an official undertaking in the sum of twenty-five thousand dollars, with two good sureties to be approved by the comptroller. Neither the superintendent nor any deputy nor employee shall be directly or indirectly interested in any insurance corporation, except as an ordinary policy-holder. (*Amended by L. 1912, ch. 265, in effect Apr. 11, 1912.*)

§ 16. **Investment of capital and surplus.**—The cash capital of every domestic insurance corporation required to have a capital, to the extent of the minimum capital required by law, shall be invested and kept invested in the stocks or bonds of the United States or of this state, not estimated above their current market value, or in the bonds of a county or incorporated city in this state authorized to be issued by the legislature, not estimated above their par value or their current market value, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. The cash capital of every foreign insurance corporation to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested

in the same class of securities specified for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities in which deposits are required to be invested or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon, or except as in this chapter otherwise provided, in the stocks, bonds or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States or of any state thereof, or in such real estate as it is authorized by this chapter to hold; but no such funds shall be invested in or loaned on its own stock or the stock of any other insurance corporation carrying on the same kind of insurance business, except that any such company organized under section seventy of this chapter for the purpose of engaging in business solely as a surety company as provided in subdivision four of that section may invest such funds in or loan such funds on the stock of any other corporation carrying on solely the same kind of business outside of but not within the United States; provided, however, that the superintendent in determining the condition of any such corporation so loaning or investing such funds shall not allow it as an asset the amount of the funds so loaned or invested; and provided that, if a stock life insurance corporation shall determine to become a mutual life insurance corporation, it may, in carrying out any plan to that end under the provisions of section ninety-five of this chapter, acquire any shares of its own stock by gift, bequest or purchase. Any domestic insurance corporation may, by the direction and consent of two-thirds of its board of directors, managers or finance committee, invest, by loan or otherwise, any such surplus moneys or funds in the bonds issued by any city, county, town, village or school district of this state, pursuant to any law of this state. Any corporation organized under subdivision one-a, section one hundred and seventy of this chapter, for guaranteeing the validity and legality of bonds issued by any state, or by any city, county, town, village, school district, municipality or other civil division of any state, may invest by loan or otherwise any of such surplus moneys or funds in the bonds which they are authorized to guarantee. Every such domestic corporation doing business in other states of the United States or in foreign countries, may invest the funds required to meet its obligation incurred in such other states or foreign countries and in conformity to the laws thereof, in the same kind of securities in such other states or foreign countries that such corporation is by law allowed to invest in, in this state. Any life insurance company may lend a sum not exceeding the lawful reserve which it holds upon any policy, on the pledge to it of such

policy and its accumulations as collateral security. But nothing in this section shall be held to authorize one insurance corporation to obtain, by purchase or otherwise, the control of any other insurance corporation. (*Amended by L. 1912, chs. 240 and 302, L. 1911, ch. 150 and L. 1912, ch. 233, in effect Apr. 9, 1912.*)

§ 26. Deposits by insurance corporations of other states.

The sworn statement of a surety company, as a justification, cannot be regarded as insufficient upon a claim that it has large outstanding contingent liabilities in this state and practically no assets, because by this section, it is required to keep on deposit in this state or in the state of its incorporation the same amount and character of securities which a domestic insurance company is required to deposit with the superintendent of this state. *Harriman v. Geer* (1912), 75 Misc. 218.

§ 28. Special deposit required in certain cases.

The protection afforded by a deposit made by a foreign insurance company with the Superintendent of Insurance for the benefit and security of its policy holders in the United States includes policy holders in Porto Rico. *Rept. of Atty. Genl., Mch. 27, 1912.*

§ 31. Certified copy of superintendent's certificate to be filed in the clerk's office.

The Superintendent of Insurance may dispense with the publishing of the certificate of authority to do business issued by him, as required by this section, to an insurance corporation incorporated under the laws of the State of Iowa and authorized since February 24, 1885, to transact business in this state as an assessment life insurance company of the character referred to in Article VI of the Insurance Law, where it appears that the corporation has amended its charter pursuant to the laws of the State of Iowa so that it becomes a mutual life insurance company such as is described in Article II of the Insurance Law of this state, upon permitting it to continue here the transaction of business under its amended charter. *Rept. of Atty. Genl. (1911), Vol. 2, p. 658.*

§ 46. Annual report of superintendent.—The superintendent of insurance shall annually transmit to the legislature at the opening of the session, or within ninety days thereafter, a report containing the statements and reports made to him pursuant to the provisions of section forty-four of this chapter, as such statements and reports shall be audited and corrected by him, all arranged in tabular form, or in abstracts, in classes according to the kind of insurance made by the corporation, which report shall also contain:

1. A statement of all insurance corporations authorized to do business in this state during the year ending the thirty-first day of December next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business, and kinds of insurance in which they are engaged respectively.

2. A statement of the insurance corporations whose business has been closed during such year and the reasons for closing the same, with the amount of their assets and liabilities so far as the same are known, or can be ascertained by him.

L. 1912, ch. 217.

Delinquent corporations.

§§ 55, 58, 63.

3. Any amendments to this chapter which in his judgment may be desirable.

4. The names and compensation of the clerks employed by him and the whole amount of the expenses of the department.

In addition to the usual number of copies for the use of the legislature, there shall be printed and in readiness for distribution by the printer employed to print legislative documents, two thousand copies of such report for the use of the department. (*Amended by L. 1909, ch. 301, L. 1910, ch. 634 and L. 1912, ch. 89, in effect Apr. 3, 1912.*)

§ 55. Insurance without the consent of the insured prohibited.

Limitation of amount of policies on life of child.—The provisions of this section do not prevent a person liable for the support of a child from taking out several policies of insurance on the life of said child, although the total amount of said policies is greater than that prescribed by the statute. *Flynn v. Prudential Ins. Co. (1911), 145 App. Div. 704, 130 N. Y. Supp. 546.*

§ 58. Policy to contain the entire contract; statements of insured to be representations and not warranties.

This section is not retroactive and applies only to policies issued on or after January, 1907. *Perry v. Prudential Ins. Co. (1911), 144 App. Div. 780, 129 N. Y. Supp. 751.*

Form and contents of policy; statements or representations of insured.—In accordance with this section every policy of life insurance issued in this state since January 1, 1907, should set forth plainly on its face the contract of insurance and the consideration therefor, including any statements or representations leading the company to enter into the agreement. Allegations of an answer in an action upon a policy of life insurance issued in this state since January 1, 1907, of misstatements made by the insured to defendant's medical examiner and that they were made fraudulently with intent to deceive and that they did deceive the defendant will be stricken out on motion upon the ground that the medical examination of the insured and the questions and answers at such examination are in no way referred to in the policy. *Semble*, that to allow the insurance company to avail itself of such matters would be to defeat the legislative intent of said section 58. *Becker v. Colonial Life Ins. Co. (1912), 75 Misc. 213.*

§ 63. Proceedings against and liquidation of delinquent insurance corporations.—This section shall apply to all corporations, associations, societies and orders to which any article of this chapter is applicable, and to all corporations, associations, societies and orders which are subject to examination under any section of this chapter, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization intending to do such business therein, anything as to any such corporations, associations, societies or orders provided in this article to the contrary notwithstanding; and the words "corporation" or "corporations" herein shall also include all such associations, societies and orders as well as all voluntary or unincorporated associations.

1. Whenever any domestic corporation (a) is insolvent; or (b) has

refused to submit its books, papers, accounts or affairs to the reasonable inspection of the superintendent, or his deputy or examiner; or (c) has neglected or refused to observe an order of the superintendent to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired, or (d) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other corporation, association, society or order, without having first obtained the written approval of the superintendent; or (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has willfully violated its charter or any law of the state; or (g) whenever any officer thereof has refused to be examined under oath touching its affairs; or (h) if such corporation be organized under article six, seven or eight of this chapter, its condition is found, after examination, to be such that it could not meet the requirements for incorporation and authorization specified in such articles respectively, the superintendent may, the attorney-general representing him, apply to the supreme court or any justice thereof in the judicial district in which the principal office of such corporation is located for an order directing such corporation to show cause why the superintendent should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require.

2. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct such superintendent, or his successors in office, forthwith to take possession of the property and conduct the business of such corporation, and retain such possession and conduct such business until, on the application either of the superintendent, the attorney-general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the superintendent to take possession has been removed and that the corporation can properly resume possession of its property and the conduct of its business.

3. If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such corporation, such liquidation shall be made by and under the direction of such superintendent, and his successors in office, who may deal with the property and business of such corporation in their own names as superintendents, or in the name of the corporation, as the court may direct, and

shall be vested by operation of law with title to all the property, contracts and rights of action of such corporation as of the date of the order so directing them to liquidate. The filing or recording of such order in any record office of the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. The rights and liabilities of any such corporation, and of its creditors, policyholders, stockholders and members, and of all other persons interested in its assets, shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the liquidation of such corporation in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business upon the date of the institution of proceedings under this section.

4. Whenever any of the grounds of jurisdiction over domestic corporations specified in subdivisions (a), (b), (c), (d), (e), (f) and (g) of subsection one of this section exist or arise with reference to any corporation incorporated by or existing under the government or laws of any country outside of the United States and authorized to transact the business of insurance and having assets in this state; or whenever any foreign corporation so authorized and having assets in this state has been placed in the hands of a receiver or had its property sequestered in its domiciliary state or country or in any other state or country. the superintendent may, the attorney-general representing him, apply to the supreme court or any justice thereof in the judicial district in which such corporation has its principal office for the transaction of business in this state, for an order directing such corporation to show cause why the superintendent should not take possession of its property and conserve its assets for the benefit of its creditors, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders or the public may require.

5. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation and its officers, agents and employees from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the superintendent forthwith to take possession of the property and conserve the assets of such corporation, and retain such possession until, on the application either of the superintendent, the attorney-general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the superintendent to take possession has been removed and that the corporation can properly resume possession of its property and conduct its business. If, on such application, the court shall direct the superintendent to take possession of the property and conserve the assets of such corporation, the rights and duties of the said superintendent with reference to such corporation and its said assets shall be those heretofore exercised by

and imposed upon ancillary receivers of foreign corporations in this state.

6. For the purpose of this section, the superintendent shall have power to appoint, under his hand and official seal, one or more special deputy superintendents of insurance, as his agent or agents, and to employ such counsel, clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The compensation of such special deputy superintendents, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation shall be fixed by the superintendent, subject to the approval of the court, and shall, on certificate of the superintendent, be paid out of the funds or assets of such corporation. During the progress of any proceedings taken under this section, the superintendent, his deputies or any examiner authorized by him and the special deputy superintendent of insurance acting for the said superintendent therein shall have all of the powers given to the superintendent, his deputy or any examiner authorized by him, by section thirty-nine of this chapter, including the power to examine under oath the persons specified in such section, and to compel the production of books and papers as therein provided.

7. For the purposes of this section, the superintendent shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

8. The superintendent shall transmit to the legislature, in his annual report, the names of the corporations so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such corporation shall file annually with the superintendent a report of the affairs of such corporation.

9. All acts of the superintendent of insurance in taking or continuing in possession of any property, or in the regulation, conduct or liquidation of the business, of any corporation to which this section is applicable, since the first day of January, nineteen hundred and nine, whether such taking possession, continuing in possession, regulation, conduct or liquidation was in pursuance of a contract, by mutual consent or otherwise, are hereby ratified, legalized and confirmed.

10. At any time after the court shall order the liquidation of the business of any such corporation, as provided in paragraph number three of this section, the superintendent of insurance may apply for the dissolution of such corporation, and the same, after due notice and hearing and such other procedure as to the court shall seem proper, shall be dissolved.

11. The order to show cause and the papers upon which the same is made in any proceeding instituted under the provisions of this section shall be served upon the corporation named in such order in the manner prescribed for personal service of summons upon a domestic corporation by

section four hundred and thirty-one of the code of civil procedure. When it is satisfactorily proved by affidavit that the officers of the corporation named in the said order to show cause, upon whom service is required to be made as above provided, or, if a Lloyds association be named in the order to show cause, the duly designated attorney-in-fact, have departed from the state or keep themselves concealed therein with intent to avoid service, such order to show cause may provide for service thereof in such manner as the court or justice by whom the same is made, shall direct. (*Added by L. 1909, ch. 300 and amended by L. 1912, ch. 217, in effect Apr. 8, 1912.*)

§ 65. **Rebating and discriminations prohibited.**—No insurance corporation, association, partnership, Lloyds or individual underwriters authorized or permitted to do any insurance business within this state, or any officer, agent, solicitor or representative thereof, shall make any contract for such insurance, on property or risk located within this state, or against liability, casualty, accident or hazard that may arise or occur therein or agreement as to such contract, other than as plainly expressed in the policy issued or to be issued thereon; nor shall any such corporation, association, partnership, Lloyds or individual underwriters, or officer, agent, solicitor or representative thereof, directly or indirectly, in any manner whatsoever, pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, or give, sell or purchase, or offer to give, sell or purchase, as inducement to such insurance, or in connection therewith, any stock, bonds or other securities of any insurance company, or other corporation or association, or any dividends or profits accrued thereon, or anything of value whatsoever, not specified in the policy, nor shall any insurance broker, his agent or representative, or any other person, directly or indirectly, either by sharing commissions or in any manner whatsoever pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy; nor shall the insured, his agent or representative, directly or indirectly accept or knowingly receive any such rebate from the premium specified in the policy; this section shall not prevent any corporation, person, partnership or association lawfully doing such insurance business in this state from the distribution of surplus and dividends to policyholders after the first year of insurance nor prevent any member of an inter-insurance or Lloyds association from receiving the profit of his or its underwriting; nor shall this section prevent any such corporation or other insurer, or his or its agent, from paying commissions to the broker who shall have negotiated for the insurance, nor shall this section prevent any licensed broker from sharing or dividing a commis-

sion earned or received by him with any other licensed broker or brokers who shall have aided him in respect to the insurance for the negotiation of which such commission shall have been earned or paid, and nothing herein contained shall be held to prevent the covering of risks by temporary binders or such other memoranda as do not conflict with the provisions of this chapter. Nor shall this section prevent any such corporation or other insurer, or any agent or insurance broker, from distributing or presenting to any person or corporation an article of merchandise not exceeding one dollar in value, which shall have conspicuously stamped or printed thereon the advertisement of such insurance corporation, agent or broker.

No person shall be excused from attending and, when ordered so to do, from testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or to produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Any person or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall forfeit to the people of the state the sum of five hundred dollars for each such violation. This section shall not apply to any contract of life insurance nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts made by persons, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter. (*Added by L. 1911, ch. 416, and L. 1912, ch. 225, in effect Apr. 8, 1912.*)

§ 70. **Incorporation.**—Thirteen or more persons may become a corporation for the purpose of making any of the following kinds of insurance:

1. Upon the lives or the health of persons and every insurance appertaining thereto, and to grant, purchase or dispose of annuities.
2. Against injury, disablement or death resulting from traveling or general accident, and against disablement resulting from sickness and every insurance appertaining thereto.
3. Insuring any one (a) against loss or damage resulting from accident to or injury suffered by an employee or other person, and for which the person insured is liable, and (b) against loss or damage to property caused by horses or by any vehicle drawn by animal power, and for which loss or damage the person insured is liable.
4. Guaranteeing the fidelity of persons holding places of public or private trust. Guaranteeing the performance of contracts other than in-

insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states or municipalities in lieu of actual deposits; and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law required. Guaranteeing and indemnifying merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them; and corporations authorized to do such last named business in this subdivision mentioned shall have all the powers conferred by section one hundred and seventy-eight of this chapter.

5. Against loss by burglary or theft, or both.

6. Upon glass against breakage.

7. Upon steam boilers and pipes, fly-wheels, engines and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life or property resulting therefrom and against loss of use and occupancy caused thereby, and to make inspection of and to issue certificates of inspection upon such boilers, pipes, fly-wheels, engines and machinery.

8. Upon the lives of horses, cattle and other live stock by the theft of any such property, or both, or against loss. (*Subdivision thus amended by L. 1912, ch. 231, in effect Apr. 9, 1912.*)

Note.—The amendment made by L. 1912, ch. 231 includes the words after "stock." The words are omitted from L. 1912, ch. 232, amending the entire section and signed by the governor on the same day, Apr. 9, 1912. In as much as they may be effectual without conflict with the other amendments made by ch. 232, the courts will probably give them effect, although omitted from the chapter presumably signed later in the same day.

9. Against loss or damage to automobiles (except loss or damage by fire, or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles.

10. Against loss or damage by water to any goods or premises, arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps or other apparatus. By making and filing in the office of the superintendent of insurance a certificate signed by each of them, stating their intention to form a corporation for the purpose or purposes named in some one of the foregoing subdivisions specifying the subdivisions; and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the kind of insurance to be undertaken, and under which of the foregoing subdivisions it is authorized, the mode and manner in which its corporate powers are to be exercised, the manner of electing its directors and officers, a majority of whom shall be citizens and residents of this state, the time of such elections, the manner of filling vacancies, the

amount of its capital, if any, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the corporation.

Such certificate shall be proved or acknowledged and recorded in a book to be kept for that purpose, and a certified copy thereof delivered to the persons executing the same. A mutual company, without capital stock, may be organized for the purposes either separately or taken together, specified in the first and second subdivisions of this section. Except as above provided, no such corporation shall be formed under this article for the purpose of undertaking any other kind of insurance than that specified in some one of the foregoing subdivisions, or more kinds of insurance than are specified in a single subdivision; but a corporation other than a mutual corporation may be formed for all the purposes combined, or any two or more of them, specified in the first and second subdivisions and clause (a) of the third subdivision, or for all the purposes combined, or any two or more of them specified in the second, third, fourth, fifth, sixth, seventh, eighth and ninth subdivisions; provided, however, that policies under subdivision nine shall be issued only by companies authorized to issue policies under subdivisions two, three or five. No corporation or association shall transact, in connection with any other kind of insurance mentioned in the foregoing subdivisions, the business of guaranteeing and indemnifying merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, except such a corporation or association as was authorized to transact such business before June first, nineteen hundred and five; but such a corporation or association may continue to transact such business with all the powers and privileges theretofore possessed or enjoyed by it. No one policy issued by any one corporation shall embrace more kinds of insurance than are specified in one of such subdivisions, except that a policy may embrace risks specified in subdivisions one and two, and in subdivision two and clause (a) of subdivision three, and also that companies electing to issue policies under subdivision nine may embrace in one policy risks under subdivision two, clause (a) of subdivision three, and subdivisions five and nine, or either of them. (*Amended by L. 1909, ch. 302; L. 1910, ch. 637; L. 1911, ch. 324 and L. 1912, ch. 232, in effect Apr. 9, 1912.*)

§ 88. Surrender value of lapsed or forfeited policies.

Extension of policy on failure to pay premium—part payment with note for balance.—As section 88 of chapter 690 of the Laws of 1892 provides in substance that if a premium be not paid when due the insured is entitled to have his policy extended for the full amount from the date it lapses for such time as the reserve on the policy taken as a single premium at the age of the insured at the time of forfeiture would purchase temporary insurance, after deducting any indebtedness of the insured on account of premiums due, the beneficiary of one holding a policy containing a similar provision inserted pursuant to said statute is entitled to recover the full amount of the policy on the death of the insured where, having been unable to pay the full amount of a certain premium, he gave the insurance com-

pany a six months' note for the balance, which was accepted by it as payment of the premium, and, on the maturity of the note, made another part payment, giving a similar note for the balance, even though the latter note was not paid when due, if in fact at the death of the insured the difference between the part payments and the amount of the second note was sufficient to purchase continuing insurance for a period extending beyond the death of the insured. Where the notes executed by the insured expressly reserved to him all rights contained in the policy itself, which policy purported to give him the extended insurance required by the statute, it cannot be contended that he waived the right of the extended insurance by giving the note in part payment of premiums. *Taylor v. New York Life Ins. Co.* (1912), 148 App. Div. 815.

§ 89. Discriminations prohibited.

Application and construction.—This section simply provides the manner in which the Superintendent of Insurance may restrain future disobedience. It does not provide a specific penalty for giving rebate which should be considered exclusive. *Equitable Trust Co. v. Newman* (1911), 72 Misc. 52, 129 N. Y. Supp. 259.

The object of this section is to require life insurance companies to give equal terms to be fixed in the policies to insurers of the same class, and to give special favor to no one, and its operation is directed against considerations or inducements to a contract of insurance which are not specified in the policy. *McGee v. Felter* (1912), 148 App. Div. 349.

Violation of section; what constitutes.—In an action by an indorsee, who was not an innocent holder in due course, against the maker of a promissory note given for the first premiums of certain policies of insurance issued upon his life by a foreign insurance company authorized to do business in this state, the fact that the note was payable without interest in eighteen months after the delivery of the policies does not constitute a violation of this section, and under an answer which, in addition to a mere denial of any indebtedness on the note, alleges as an affirmative defense, of which no proof was given, that the note was procured by the false and fraudulent representations of the payee, who was also the agent of the company, and there is no allegation that any consideration or inducement not specified in the policies was offered the defendant, the plaintiff is entitled to judgment, as the delivery of the policies was a good consideration for the note. If the transaction concerning the note came within the prohibition of this section, it was incumbent upon defendant to allege and prove that the note was taken and made upon a consideration or inducement for defendant's taking out the policies but not specified therein. *McGee v. Felter* (1912), 148 App. Div. 349.

§ 92. No forfeiture of policy without notice.

Forfeiture under original notice after extension of time of payment.—Where a notice that a semi-annual premium on a life insurance policy was due on a certain date was duly mailed to the insured by the insurer, and, on the day before the expiration of the thirty days of grace provided for by statute and by the policy, the insurer at the request of the insured accepted payment of one-fifth of the semi-annual premium and extended the time of payment of the balance for one month, and thereafter, before the extension expired, the insurer again accepted one-fifth of the semi-annual premium and extended the time to pay the balance for another month, and, having received two subsequent notices that the balance of the premium was due at the expiration of the last extension, the insured failed to pay the balance, the insurer was entitled to declare the policy forfeited under the original notice that the semi-annual premium was due. *Stewart v. Home Life Insurance Co.* (1911), 146 App. 709, 131 N. Y. Supp. 504.

§§ 110, 121, 134, 141.

Rate-making associations.

L. 1912, ch. 175.

Defense of forfeiture in action on policy.—This action was brought on the 27th day of September, 1907, to recover the amount of a policy of insurance issued by the defendant upon the life of plaintiff's assignor, who died on the 11th day of April, 1907. The defense interposed was to the effect that the policy had been forfeited owing to non-payment of the premium, which became due on the 1st day of December, 1904. An issue was raised as to whether the defendant had served the notice required by chapter 321 of the Laws of 1877 as a condition precedent to the forfeiture of a policy of life insurance, which issue was submitted to the jury. A verdict resulted in favor of plaintiff. Defendant contends that the right of the plaintiff to maintain the action is barred by reason of the amendment to the law of 1877 by chapter 218 of the Laws of 1897, as amended by chapter 326 of the Laws of 1906, providing that "no action shall be maintained to recover under a forfeited policy unless the same is instituted within two years from the day upon which the default was made in paying the premium." It was held untenable; that under the verdict of the jury there was no forfeiture of the policy by reason of the non-payment of the premium of December 1, 1904. The action, therefore, was not one maintained under a forfeited policy. *Adam v. Manhattan Life Ins. Co.* (1912), 204 N. Y. 357.

§ 110. Incorporation.

A fire insurance company cannot lawfully issue a policy of fire insurance indemnifying the assured against liability for coupon bonds and other negotiable securities contained in safes and vaults on the assured's premises. *Rept. of Atty. Genl.*, Feb. 8, 1912.

§ 121. Standard fire insurance policy to be prescribed and used.

A rider attached to a policy of insurance, stating that it is issued upon the understanding and warranty by the assured that another certain company has a policy in force insuring the identical property in identically the same proportions and at no higher rate of premium, is within the second exception contained in this section. In such a case, where the policy referred to in the rider was in fact written at a higher rate of premium and the proportions were not identical, the policy to which the rider is attached is void for the breach of the warranty. *Scharles v. N. Hubbard Jr. & Co.* (1911), 74 Misc. 72, 131 N. Y. Supp. 848.

§ 134. Undertaking of agent.

Application.—The provisions of the statute are not limited in their application to local resident agents but apply to all agents of insurance companies writing contracts of insurance within the state. *Fire Department of East Rochester v. Barley* (1911), 73 Misc. 628, 133 N. Y. Supp. 529.

The complaint in an action to recover the penalty for failure to execute and deliver the bond prescribed by this section need not specify the particular policies of insurance which have been issued in violation of law. *Fire Department of East Rochester v. Barley* (1911), 73 Misc. 628, 133 N. Y. Supp. 529.

§ 141. Rate-making associations.—Every corporation, association or bureau which now exists or hereafter may be formed, and every person who maintains or hereafter may maintain a bureau or office, for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurances, including surety bonds, on property or risks of any kind located in this state, shall file with the superintendent of insurance a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association

or bureau operates or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the superintendent.

Every such person, corporation, association or bureau, whether before or after the filing of the information specified in the last preceding paragraph, shall be subject to the visitation, supervision and examination of the superintendent of insurance, who shall cause to be made an examination thereof as often as he deems it expedient and at least once in three years. The superintendent shall make public the results of such examination and shall report to the legislature in his annual report on the methods of such rating organization and the manner of its operation.

Each such person, corporation, association or bureau shall file with the superintendent of insurance whenever he may call therefor any and every schedule of rates or such other information concerning such rates as may be suggested, approved or made by any such rating organization for the purposes specified in the first paragraph of this section.

No such person, corporation, association or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, corporation, association or bureau, or any person, association or corporation authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard or if such rate be a fire insurance rate, which discriminates unfairly between risks within this state of essentially the same hazard belonging to classes having substantially the same fire class record, and which are similarly situated and protected against fire. Whenever it is made to appear to the satisfaction of the superintendent of insurance that such discrimination exists, he may, after a full hearing either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations or bureaus affected thereby shall immediately comply therewith.

No such person, corporation, association or bureau or any other person, corporation, association or bureau, shall charge any licensing, registration, certification or membership fee to brokers who shall have been or hereafter may be licensed or authorized as such pursuant to the provisions of this chapter; nor shall any such rating organization or any other person, corporation, association or bureau or any two or more persons, associations or corporations authorized to transact the business of insurance within this state, acting in agreement, refuse to do business with or to pay com-

missions to any person who may be licensed or authorized as an insurance broker, pursuant to the provisions of this chapter, because such a broker will not agree to secure insurance only at the rates of premium fixed by such rating organization or the parties to such agreement.

Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and, if such property or risk be rated by schedule, a copy of such schedule; it shall also provide such means as may be approved by the superintendent of insurance whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate or rates.

This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter, but it shall apply to all other forms of insurance mentioned in any article of this chapter. (*Added by L. 1911, ch. 460 and amended by L. 1912, ch. 175, in effect Oct. 1, 1912.*)

§ 142. **Agents' and brokers' certificates of authority.**—The term "agent" in this section shall include an acknowledged agent or surveyor or any other person, partnership, association or corporation who shall in any manner aid in transacting the insurance business of any underwriter, incorporated or unincorporated. The term "broker" in this section shall include any person, partnership, association or corporation who, for compensation, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or procuring insurances, including surety bonds.

No person, partnership, association or corporation shall act as agent for any underwriter, incorporated or unincorporated, in the transaction of any business of insurance within this state, or negotiate for or place risks for any such underwriter or in any way or manner aid such underwriter in effecting insurances, or otherwise, in this state, unless such underwriter shall have fully complied with the provisions of this chapter. Every such agent shall, annually, on the first day of January, or within six months thereafter, procure a certificate of authority from the superintendent of insurance, who shall file in his office evidence of the issuance of such certificate to the agent aforesaid. No underwriter, authorized to transact any insurance business within this state, shall employ any person, partnership, association or corporation, as agent to solicit insurance or issue policies for him or it, unless he or it has a certificate of authority as required by this

section. Such certificate shall be revoked by the superintendent of insurance if, after due investigation and a hearing either before himself or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate has violated any provision of this chapter. No person whose certificate of authority is so revoked, nor any partnership of which he is a member, nor any corporation of which he is an officer shall be entitled to any certificate of authority under this section for a period of one year after such revocation, and, if any such certificate, held by a partnership or corporation, is so revoked, no member of the partnership or officer of the corporation shall be entitled to any such certificate for the same period of time.

No underwriter authorized or permitted to do business in this state, or agent thereof, shall pay any commission or any other compensation to any person, partnership, association or corporation not a duly authorized agent of such underwriter for services in obtaining or placing any such insurance, unless such person, partnership, association or corporation shall have first procured from the superintendent of insurance a certificate of authority to act as broker to solicit such insurance as provided in this section. No person, partnership, association or corporation shall act as broker in the solicitation or procurement of applications for insurance or receive for services in obtaining or placing such insurance any commission or other compensation from any underwriter authorized or permitted to do an insurance business in this state, or agent thereof, without first procuring a certificate of authority so to act from the superintendent of insurance, which must be renewed annually on the first day of January, or within six months thereafter. No such certificate shall be valid, in any event, after the first day of July of the year following the issuing of the same. The fee, to be paid annually to the superintendent of insurance by the applicant for such broker's certificate at the time the application is made, shall be ten dollars where the applicant's principal place of business in the state is in a city of the first or second class and two dollars where the applicant's principal place of business in the state is not within a city of the first or second class. Such certificate shall be revoked by the superintendent if, after due investigation and a hearing either before himself or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate has violated any provision of this chapter by any act or thing done in respect to insurance for which such certificate is required. No person whose certificate of authority is so revoked, nor any partnership of which he is a member, nor any corporation of which he is an officer shall be entitled to any certificate of authority under this section for a period of one year after such revocation, and, if any such certificate held by a partnership or corporation, is so revoked, no member of the partnership or officer of the corporation shall be entitled to any such certificate for the same period of time.

Before any broker's certificate of authority shall be issued by the superintendent of insurance there must be filed in his office a written application for such certificate which must set forth (a) the name and address of the applicant, and if the applicant be a partnership, the names and addresses of each member thereof, and if a corporation, the names and addresses of each of its officers; (b) whether any certificate of authority as agent or broker has been issued theretofore by the superintendent of insurance to the applicant, and, if the applicant is an individual, whether any such certificate has been issued theretofore to any partnership of which he was or is a member, or to any corporation of which he was or is an officer, and, if the applicant is a partnership, whether such certificate has been issued theretofore to any member thereof, and, if the applicant is a corporation, whether such certificate has been issued theretofore to any person who at the time application is made is an officer of such corporation; (c) the business in which the applicant has been engaged for the year next preceding the date of the application, and, if employed by another, the name or names of such employer or employers; (d) that the applicant is engaged or intends to engage, in good faith, principally in the insurance business or that he conducts or intends to conduct such business in connection with a real estate agency or real estate brokerage business, and is not a salaried employee of any person, partnership, association or corporation on whose property or risks he receives or expects to receive application for insurance, and does not make the application for a certificate of authority for the sole purpose of securing commissions on insurance written on his own property or risks. Such application must be signed and verified by the applicant, and, if made by a partnership, by each member thereof, and if by a corporation, by any proper officer thereof.

If the superintendent of insurance shall revoke the certificate of authority of any agent or broker issued under this section and such agent or broker shall apply for a writ of certiorari to review such action, the operation of such revocation shall be suspended and such revocation shall not become operative until the final determination of such certiorari proceedings and all appeals therefrom, but, in case the action of the superintendent is affirmed, such agent or broker shall not be entitled to any certificate under this section for a period of one year after such affirmation. This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter.

Any person, partnership, association or corporation violating any of the provisions of this section shall, in addition to any other penalty in this chapter provided, forfeit to the people of the state five hundred dollars.

Nothing in this chapter shall be so construed as to prevent any person,

partnership, association or corporation authorized to do an insurance business within this state from authorizing a broker to whom a certificate of authority has been issued under this section to act as its agent for the collection of premiums. (*Added by L. 1911, ch. 748 and amended by L. 1912, ch. 1, in effect Feb. 7, 1912.*)

Note.—The same section is amended by L. 1912, ch. 172, but the amendment does not take effect until Jan. 1, 1913. The section as above will therefore be in force until that date, after which the section as amended below will be in force.

§ 142. Agents' and brokers' certificates of authority.—The term "agent" in this section shall include an acknowledged agent or surveyor or any other person, partnership, association or corporation who shall in any manner aid in transacting the insurance business of any underwriter, incorporated or unincorporated. The term "broker" in this section shall include any person, partnership, association or corporation who, for compensation, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or procuring insurances, including surety bonds.

No person, partnership, association or corporation shall act as agent for any underwriter, incorporated or unincorporated, in the transaction of any business of insurance within this state, or negotiate for or place risks for any such underwriter or in any way or manner aid such underwriter in effecting insurances, or otherwise, in this state, unless such underwriter shall have fully complied with the provisions of this chapter. Every such agent shall, annually, on the first day of January, or within six months thereafter, procure a certificate of authority from the superintendent of insurance, who shall file in his office evidence of the issuance of such certificate to the agent aforesaid. No underwriter, authorized to transact any insurance business within this state, shall employ any person, partnership, association or corporation, as agent to solicit insurance or issue policies for him or it, unless he or it has a certificate of authority as required by this section. Such certificate shall be revoked by the superintendent of insurance if, after due investigation and a hearing either before himself or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate has violated any provision of this chapter. No person whose certificate of authority is so revoked, nor any partnership of which he is a member, nor any corporation of which he is an officer shall be entitled to any certificate of authority under this section for a period of one year after such revocation, and, if any such certificate, held by a partnership or corporation, is so revoked, no member of the partnership or officer of the corporation shall be entitled to any such certificate for the same period of time.

No underwriter authorized or permitted to do business in this state, or agent thereof, shall pay any commission or any other compensation to any person, partnership, association or corporation not a duly authorized

agent of such underwriter for services in obtaining or placing any such insurance, unless such person, partnership, association or corporation shall have first procured from the superintendent of insurance a certificate of authority to act as broker to solicit such insurance as provided in this section. No person, partnership, association or corporation shall act as broker in the solicitation or procurement of applications for insurance or receive for services in obtaining or placing such insurance any commission or other compensation from any underwriter authorized or permitted to do an insurance business in this state, or agent thereof, or other person or persons, without first procuring a certificate of authority so to act from the superintendent of insurance, which must be renewed annually on the first day of January, or within six months thereafter. No such certificate shall be valid, in any event, after the first day of July of the year following the issuing of the same. A certificate of authority issued to a corporation, partnership, or association shall authorize the solicitation or procurement of applications for insurance only by the officers of the corporation or the members of the partnership or association, specified in the certificate and in the application therefor, each of whom must be qualified to obtain a certificate and for each of whom the additional fee herein prescribed must be paid. The fee, to be paid annually to the superintendent of insurance by the applicant for such broker's certificate at the time the application is made, and, in the case of a corporation, partnership or association, the additional fee to be paid for each person to be specified in such certificate, shall be ten dollars where the applicant's principal place of business in the state is in a city and two dollars where the applicant's principal place of business in the state is not within a city.

The superintendent of insurance shall issue such broker's certificates of authority to those persons, partnerships and corporations who are trustworthy and competent to transact an insurance brokerage business in such a manner as to safeguard the interests of the insured.

Before any broker's certificate of authority shall be issued by the superintendent of insurance there must be filed in his office a written application for such certificate. Such application shall be in the form or forms or supplements thereof prescribed by the said superintendent and shall contain such information as he may deem material to the proper determination by the said superintendent of the trustworthiness of the applicant and his competency to transact such insurance brokerage business. If the principal place of business of the applicant is in a city such application must also set forth (a) the name and address of the applicant, and if the applicant be a partnership, the names and addresses of each member thereof, and if a corporation, the names and addresses of each of its officers; (b) whether any certificate of authority as agent or broker has been issued theretofore by the superintendent of insurance to the applicant, and, if the applicant is an individual, whether any such certificate has been issued theretofore to any partnership of which he was or is a member, or to any

corporation of which he was or is an officer, and, if the applicant is a partnership, whether such certificate has been issued theretofore to any member thereof, and, if the applicant is a corporation, whether such certificate has been issued theretofore to any person who at the time application is made is an officer of such corporation; (c) the business in which the applicant has been engaged for the year next preceding the date of the application, and, if employed by another, the name or names of such employer or employers; (d) that the applicant is engaged or intends to engage, in good faith, principally in the insurance business or that he conducts or intends to conduct such business in connection with a real estate agency or real estate brokerage business, and is not a salaried employee of any person, partnership, association or corporation on whose property or risks he receives or expects to receive application for insurance, and does not make the application for a certificate of authority for the sole purpose of securing commissions on insurance written on his own property or risks. Such application must be signed and verified by the applicant, and, if made by a partnership, association or corporation, by each member of such partnership or association or each officer of such corporation, to be authorized thereby to solicit or procure applications for insurance.

Such certificate shall be revoked by the superintendent if, after due investigation and a hearing either before himself or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate (a) has violated any provision of this chapter by any act or thing done in respect to insurance for which such certificate is required, or (b) has made a material misstatement in his application for such certificate, or (c) has been guilty of fraudulent practices, or (d) has demonstrated his incompetency to transact the insurance brokerage business by reason of anything done or omitted in and about such business under the authority of such certificate, or (e) if the principal place of business of the holder of such certificate is in a city, has either ceased to be engaged or failed to become engaged principally in the insurance business or to conduct such business in connection with a real estate agency or real estate brokerage business, or (f) if the principal place of business of the holder of such certificate was not in a city when such certificate was issued, has established such place of business in a city. No person whose certificate of authority is so revoked, nor any partnership of which he is a member, nor any corporation of which he is an officer shall be entitled to any certificate of authority under this section for a period of one year after such revocation, and, if any such certificate held by a partnership or corporation is so revoked, no member of the partnership or officer of the corporation shall be entitled to such certificate for the same period. The holder of any such certificate or any person aggrieved may file with the superintendent of insurance a verified complaint setting forth facts from which it shall appear that any such certificate ought to be revoked. The superintendent must thereupon,

after investigation and a hearing as herein provided, determine whether such certificate shall be revoked.

The action of the superintendent of insurance in granting or refusing to grant or renew a certificate of authority or in revoking or refusing to revoke such certificate shall be subject to review by writ of certiorari, at the instance of the applicant for such certificate, the holder of a certificate so revoked or the holder of any such certificate or the person aggrieved. If the superintendent of insurance shall revoke, or shall refuse to renew the certificate of authority of any agent or broker issued under this section and such agent or broker shall apply for a writ of certiorari to review such action, the certificate of authority of such agent or broker shall be deemed to be in full force and effect until the final determination of such certiorari proceedings and all appeals therefrom, provided the fee for such certificate is paid, but, in case the action of the superintendent in revoking such certificate is affirmed, such agent or broker shall not be entitled to any certificate under this section for a period of one year after such affirmation.

This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter.

Any person, partnership, association or corporation violating any of the provisions of this section shall, in addition to any other penalty in this chapter provided, forfeit to the people of the state five hundred dollars.

Nothing in this chapter shall be so construed as to prevent any person, partnership, association or corporation authorized to do an insurance business within this state from authorizing a broker to whom a certificate of authority has been issued under this section to act as its agent for the collection of premiums. (*Added by L. 1911, ch. 748 and amended by L. 1912, ch. 1, and L. 1912, ch. 172, in effect Jan. 1, 1913.*)

L. 1912, ch. 172, § 2.—This act shall take effect on the first day of January, nineteen hundred and thirteen, except that prior thereto the Superintendent of Insurance may prescribe the forms or supplements thereof to be used by applicants for brokers' certificates of authority, and may receive and file such applications and accept and receipt for the fees to accompany the same.

§ 180. Additional powers of certain title guaranty companies.

Application.—It is not within the general powers of a title guaranty corporation "to guarantee the performance of contracts other than insurance policies." Rept. of Atty. Genl., Feb. 28, 1912.

§ 184. Supreme court may require statement to be filed.

The purpose of this section is to relieve a surety company from attending for an examination through its officers whenever its undertaking is excepted to, and at the same time afford adequate protection to the person for whose benefit the under-

L. 1912, ch. 90.

Advance premium corporations.

§§ 210, 267.

taking is given; and a bond on appeal executed by a surety company duly authorized to transact business in this state and which some years ago filed, in the county in which its principal place of business is located, a sworn statement of its financial condition, may be accepted by the court in its discretion without further justification. The court upon a claim that the present condition of the surety company is different from what it was when its sworn statement was filed may order a new statement to be filed and may also require the surety company to submit to an examination before a referee as to its solvency, the exceptants to the bond to pay the costs of the reference if unsuccessful in their contention. *Harri-man v. Geer* (1912), 75 Misc. 218.

§ 210. Payment of maximum amount of policy; agreements for benefits; notice of assessment.

Contract not affected.—This section does not affect the contract between the certificate holder and the association, and in connection with § 207 is merely intended to provide a method of determining when proceedings may be instituted to wind up such associations. In view of the obvious purposes of the Insurance Law, the attorney-general might well advise the superintendent of insurance to withhold his approval of certificates the holders of which are not personally liable for assessments; but it does not follow that such certificates can be construed by the court to be other than their terms make them. *Russell v. O'Donoghue*, 178 Fed. 106 (1910).

§ 267. General provisions affecting advance premium corporations only.—The following provision shall affect corporations doing business on the advance premium plan, pursuant to the provisions of this article.

1. Such a corporation may issue policies of insurance on dwelling-houses, stores, school buildings, churches, municipal buildings and all other kinds of buildings and on household furniture and the other contents of such buildings, on farm produce and other property, and on live stock, provided that no such policy shall be issued for more than five thousand dollars on any one risk, or in excess of fifteen thousand dollars in any one block or square in the business portion of any city or village; and provided that such a corporation shall not issue a policy for more than two thousand dollars on any one risk nor aggregating more than seven thousand dollars in any one block or square in the business portion of any city or village without water protection; and provided, further, that the total amount of insurance written by any such corporation in the business section of any city or village shall not exceed one per centum of the total amount of insurance in force in such corporation.

2. The expense of management of any such corporation shall not exceed in any one calendar year thirty-five per centum of its premium income in such year; provided that any such corporation may expend in such year an additional five per centum of such income for expenses incurred in the inspection of risks and the adjustment of losses and legal expenses connected therewith; and provided further that any expenses incurred in connection with the investment of funds, not to exceed five per centum of the income therefrom, may be defrayed from such income.

3. Every such corporation shall at all times maintain a reserve equal

SUP. III—19

to eighty per centum of the unearned portion of the premiums charged to its policyholders for all policies in force from their dates of issue; provided, however, that any such corporation, which shall or may at any time appear, by any examination made, or by any annual statement filed, subsequent to the first day of January, nineteen hundred and thirteen, not to possess or hold and maintain such reserve, shall reduce any deficiency in such reserve by not less than fifteen per centum of the deficiency on or before the filing of the annual statement required by law to be made as of the thirty-first day of December next following and by further amounts of not less than fifteen per centum of such deficiency on or before the filing of the annual statements required by law to be made as of the thirty-first day of December in each and every ensuing year, until the required reserve has been accumulated. If by any examination thereafter made, or by any annual statement thereafter filed, any such corporation shall appear not to have made the percentage of improvement herein required, the superintendent of insurance may, in the absence of good cause shown why an assessment should not be made, direct such corporation to make good the entire amount of deficiency in reserve by assessment or otherwise within sixty days.

4. Such corporations shall not make any additions to its surplus after the same equals one per centum of the amount of insurance in force, provided that any such corporation having less than one million dollars of insurance in force may maintain a surplus not exceeding ten thousand dollars. Any surplus may be distributed among the members whose policies shall expire during the ensuing year, proportioned according to the classification of the risks and the premiums paid thereon, such surplus being paid in cash or applied as a rebate on the premium required to renew the insurance on the same risk; provided that no such distribution shall be made until all sums of money which may have been advanced to the corporation pursuant to the provisions of subdivision seven of this article shall have been repaid.

5. In case any deficiency is found to exist in any such corporation, by reason of fire or other losses and expenses due and unpaid, the same shall be made good within sixty days thereafter, in case the superintendent of insurance so directs, and, in case such deficiency is not so made good, the directors shall proceed to assess the members of the corporation a sufficient sum to make good such deficiency. All assessments shall be made pro rata upon all of the property insured by the corporation at the time such assessment is made, according to its classification or according to the amount insured; the method of computing the same to be first approved by the superintendent of insurance.

6. No such corporation shall reinsure or assume the risks of any other corporation, except that any such corporation may, with the approval of the superintendent of insurance, reinsure all or any part of the outstanding risks of any other advance premium corporation in process of or con-

templating liquidation, and, with the consent of the respective policyholders, may assume all or any part of the outstanding policies of any such liquidating corporation. All of the provisions of subdivision three of this section with regard to the liability of an advance premium co-operative fire insurance corporation for unearned premiums shall apply to any advance premium co-operative fire insurance corporation which shall or may reinsure or assume the policy obligations of any liquidating corporation, and the basis upon which such unearned premiums shall be calculated shall be the original premiums paid by the respective policyholders for the insurance of their property by such liquidating corporation. No such corporation shall collect any policy or survey fee, nor pay any commission to an officer or other person whose duty it is to determine the character of the risk.

7. Any director, officer or member or members of any such corporation, or any other person may advance to such corporation, any sum or sums of money deemed necessary for the purposes of its business or to enable it to comply with any requirement of the law, which said moneys and such interest thereon as may have been agreed upon, not to exceed six per centum per annum, shall be repaid only out of the surplus earnings or profits of such corporation, and shall not form a part of the legal liabilities of the corporation or of its members and shall not be subject to repayment except as hereinabove provided. (*Added by L. 1910, ch. 328, and amended by L. 1911, ch. 323 and L. 1912, ch. 90, in effect Apr. 3, 1912.*)

ARTICLE X-A.

[Added by L. 1911, ch. 451, and amended throughout by L. 1912, ch. 453, in effect Apr. 16, 1912.]

STATE FIRE MARSHAL.

- Section 350. Office of state fire marshal established; appointment; term; salary.
- 351. * Duties of the state fire marshal.
- 352. Deputies.
- 353. Assistant officers.
- 354. Duties of assistants to the state fire marshal to investigate the cause and origin of all fires and explosions.
- 355. Duties of the state fire marshal and assistants to inspect public buildings.
- 356. Duties of the state fire marshal and assistants to inspect other property.
- 357. * Inspection of steam boilers.
- 358. Definition of explosives.
- 359. Regulations regarding quantity, distance from buildings, et cetera.
- 360. Explosives, where kept.
- 361. * Magazines classified.
- 362. Caps not kept in magazines.
- 363. * Reports of inspection to be made and certificate of compliance.

* So in original.

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| §§ 350, 351. | State fire marshal. | L. 1912, ch. 453. |
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- Section 364. Transportation.
 365. Record of sales.
 366. Exceptions.
 367. Fire arms.
 368. Penalties regarding explosives.
 369. Powers of state fire marshal, deputies and assistants.
 370. Records.
 371. Annual report.
 372. Witnesses.
 373. Duties of district attorney.
 374. Compensation of assistants.
 375. Penalties.

Note.—Section 2 of L. 1912, ch. 453, amending article throughout provides as follows:

This act shall not apply to cities having more than one million inhabitants, which maintains a municipal fire marshal except that such municipal fire marshal shall prepare and forward such reports as to fires, et cetera, which the state fire marshal may require and except that the state fire marshal shall inspect all buildings, premises or institutions owned or controlled by the state or supported in whole or in part by the funds of the state situated within said cities.

§ 350. Office of state fire marshal established; appointment; term; salary. —The office of state fire marshal is hereby established. The governor is hereby authorized and empowered to appoint, within thirty days after this act shall take effect, by and with the advice and consent of the senate, a suitable person who shall be a citizen of this state, as state fire marshal, who shall hold the office for a period of five years or until his successor is appointed and qualified. The office of the state fire marshal shall be located in the capitol in the city of Albany. He shall receive an annual salary of seven thousand dollars and shall be paid in addition, his actual and necessary expenses incurred in the performance of the duties of his office. He shall devote his whole time to the duties of his office. Whenever there shall be a vacancy in the office of state fire marshal, the governor shall fill the vacancy for the unexpired term in the manner provided in this section. The state fire marshal and his deputies shall take and subscribe and file in the office of the secretary of state the constitutional oath within fifteen days from time of notice of their appointment respectively. (*Added by L. 1911, ch. 451, amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 351. Duties.—It shall be the duty of the state fire marshal to enforce all laws and ordinances of the state, and the regulations made hereunder, except in cities having over one million inhabitants, as follows:

1. The prevention of fires;
2. The storage, sale or use of combustibles and explosives;
3. The installation and maintenance of automatic or other fire-alarm systems and fire extinguishing equipment;
4. The inspection of steam boilers;
5. The construction, maintenance and regulation of fire escapes;
6. The means and adequacy of exit, in case of fire, from factories,

L. 1912, ch. 453.

State fire marshal.

§§ 352-354.

asylums, hospitals, churches, schools, halls, theatres, amphitheatres and all other places in which numbers of persons work, live, or congregate from time to time for any purpose and the institution and supervision of fire drills in such premises;

7. The suppression of arson and investigations of the cause, origin and circumstances of fires and explosions. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 352. **Deputies.**—The state fire marshal shall appoint a first deputy fire marshal, who shall receive an annual salary of five thousand dollars, and a second deputy fire marshal who shall receive an annual salary of five thousand dollars. Each such deputy shall also be paid his actual and necessary expenses incurred in the performance of the duties of his office. The state fire marshal shall also appoint a secretary and such other clerks and assistants as shall be needed in the performance of the duties of his office. In case of the absence of the state fire marshal, or his inability from any cause to discharge the duties of his office, such duties shall devolve upon the first deputy state fire marshal; and in case of the absence of the state fire marshal and the first deputy state fire marshal, or their inability from any cause to discharge the duties and powers of their office, such duties and powers shall devolve upon the second deputy state fire marshal. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

Payment of expenses of inspectors.—The State Fire Marshal may pay the expenses of inspectors appointed by him pursuant to this section out of an appropriation of \$50,000 to the State Fire Marshal for salaries of secretary, clerks and assistants, etc., "traveling expenses and other necessary office expenses." Rept. of Atty. Genl. (1911), Vol. 2, p. 637.

§ 353. **Assistant officers.**—All municipal fire marshals in those municipalities having such officers, and, where no such officer exists, the chief of the fire department of every incorporated city or village in which a fire department is established, the president or like senior officer of each incorporated village in which no fire department exists, and the clerk of each organized town without the limits of any incorporated village or city, shall be, by virtue of such office so held by them, assistants to the state fire marshal and subject to the duties and obligations imposed by this article and shall be subject to the directions of the state fire marshal in the execution of the provisions hereof.

Immediately upon taking office the state fire marshal shall prepare instructions to the assistants designated herein and forms for their use in the reports required by this article and cause them to be printed and sent, together with a copy of this article, to each such officer located in this state. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 354. **Duties of the assistants to the state fire marshal to investigate the**

§§ 355, 356.

State fire marshal.

L. 1912, ch. 453.

cause and origin of all fires and explosions.—The assistants to the state fire marshal as defined in the preceding section shall investigate the cause, origin and circumstances of every fire or explosion occurring in any city, village or town in this state by which life has been lost or property has been destroyed or damaged, and, so far as it is possible, determine whether the fire or explosion was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of such fire or explosion by the assistant in whose territory it has occurred, and if it appears to the officer making such investigation that such fire is of suspicious origin or that such explosion has been caused by negligence or design, the state fire marshal shall be immediately notified of such fact. Every fire or explosion occurring in this state shall be reported in writing to the state fire marshal within fifteen days after the occurrence of the same by the officer designated in section three hundred and fifty-three of this article in whose jurisdiction such fire or explosion has occurred; such report shall be in the form prescribed by the state fire marshal and shall contain a statement of all facts relating to the cause and origin of such fire or explosion that can be ascertained, the loss of life or the extent of damage, the insurance upon the property damaged, and such other information as may be required. (*Added by L. 1911, ch. 451 and L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 355. Duties of the state fire marshal and assistants to inspect public buildings.—The state fire marshal and his deputies or the assistant state fire marshals under his direction shall at least once a year make an inspection of all the buildings, premises and institutions wherever they may be situated which are owned or controlled by the state of New York or supported in whole or in part by the funds of the state of New York and all other buildings owned or controlled by any county, town or village or other political subdivision of the state of New York or which are supported in whole or in part by the funds of such counties, towns or villages or other political subdivision except in cities having more than one million inhabitants. He shall cause a report of such inspection to be filed with the board, commission or officer having charge or supervision of said buildings, premises and institutions and it shall be the duty of said board, commission or officer to comply as soon as possible with the recommendations made by the state fire marshal. (*Added by L. 1911, ch. 451, and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 356. Duties of the state fire marshal and assistants to inspect other property.—The state fire marshal, his deputies or assistants, upon the complaint of any person or whenever he or they shall deem it necessary, shall inspect all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building or other structure, which, for want of repairs, lack of or insufficient fire escapes, automatic or other fire-alarm apparatus or fire extinguishing equipment, or by reason of

age or dilapidated condition or for any other cause is especially liable to fire or to cause loss of life or damage to property, and whenever such officer shall find in any building or other premises any explosive materials or inflammable conditions dangerous to life or property, he or they shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner, lessee or occupant of such premises or buildings. If such order is made by any deputy or assistant to the state fire marshal such owner, lessee or occupant may, within five days, appeal to the state fire marshal, who shall, within ten days, review such order and file his decision thereon, and unless by his authority the order is revoked or modified it shall remain in full force and be obeyed by such owner, lessee or occupant. Such owner, lessee or occupant may have the order or the final determination on appeal of an order issued by the state fire marshal reviewed by a writ of certiorari in a court of competent jurisdiction provided proceedings for such review are begun within ten days after such order has been served or appeal finally determined.

The service of any such order shall be made upon the occupant of the premises to whom it is directed by either delivering a true copy of same to such occupant personally or by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of said premises; whenever it may be necessary to serve such an order upon the owner or lessee of premises such order may be served either by delivering to and leaving with the said person a true copy of the said order, or, if such owner or lessee is absent from the jurisdiction of the officer making the order, by mailing such copy to the last known post-office address of said owner or lessee.

Any owner, lessee or occupant failing to comply with such order within ten days after said appeal shall have been determined, or, if no appeal is taken, then within ten days after the service of the said order, shall be liable to a penalty of fifty dollars for each day's neglect thereafter.

The penalty herein provided may be recovered in an action brought in any court of the county where such property is located, in the name of the people of the state under the direction of the state fire marshal or any of his assistants herein designated, by an attorney specially designated therefor by the attorney-general or by an attorney designated by the state fire marshal.

Whenever an order has been served requiring the demolition of a building or other structure, or the removal of explosive materials therefrom as hereinbefore provided, and the owner, lessee or occupant thereof has failed to comply with such order or failed to apply to a court to review the order within the time herein specified, the state fire marshal may cause such building or other structure to be demolished or such explosive material to be removed and stored elsewhere or destroyed at the discretion of the state fire marshal and the expense incurred by the state fire marshal

§§ 357, 358.

State fire marshal.

L. 1912, ch. 453.

in such demolition or in the removal of explosive materials and also any penalty recovered, as provided for in this section, shall constitute a first lien upon the premises occupied by such building or structure or where such explosive material was stored.

Whenever an order has been served requiring the installation, alteration or repair of fire escapes or exits upon any building or structure in which numbers of persons work, live or congregate from time to time for any purpose, and the owner, lessee or occupant has failed to comply with said order within the time herein specified, the state fire marshal may, in addition to any other penalty mentioned in this article, prosecute such owner or occupant in the criminal courts, and upon conviction such owner, lessee or occupant shall be liable to punishment as for a misdemeanor. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 357. The state fire marshal shall also cause to be inspected all boilers in buildings and all other places where same are used for the generation of steam and which carry a steam pressure of ten pounds or more to the square inch, except where a certificate has been filed in the office of the state fire marshal certifying that such boilers have been inspected by a duly authorized insurance company in conformity with the regulations prescribed by the state fire marshal and that upon such inspection such boilers have been found to be in a safe condition. A fee of five dollars shall be charged the owner or lessee of each boiler inspected by the inspector of the office of the state fire marshal, but not more than the sum of ten dollars shall be collected for the inspection of any one boiler for any year.

Whenever a certificate of inspection, filed in the office of the state fire marshal, shows that a boiler is in need of repairs or is in an unsafe or dangerous condition, the state fire marshal shall order such repairs to be made to such boiler as in his judgment may be necessary and he shall order the use of such boiler to be discontinued until said repairs are made or said dangerous and unsafe conditions remedied. Such order shall be served upon the owner or lessee of such boiler in the manner provided in section three hundred and fifty-six of this article and any owner or lessee failing to comply with such order within the time specified in said section three hundred and fifty-six shall be liable to the penalties prescribed therein. Nothing contained in this section shall apply to boilers used for the generation of steam on vessels, railroad locomotives or fire engines operated by any organized fire department. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 358. **Definition of explosives.**—The term “explosive” or “explosives,” whenever used in this act, shall be held to mean and include any chemical compound or any mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion

or by detonator, of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects to contiguous objects or of destroying life or limb, but not including colloided nitro-cellulose in sheets or rods or grains not under one-eighth of an inch in diameter, wet nitro-cellulose containing twenty per centum or more moisture and wet nitro starch containing twenty per centum or more moisture. For the purposes of this act, manufactured articles shall not be held to be explosives when the individual units contain explosives in such limited quantity, of such nature, or in such packing, that it is impossible to produce a simultaneous or a destructive explosion of such units, to the injury of life, limb or property by fire, by friction, by concussion, by percussion or by detonator, such as fixed ammunition for small arms, fire-crackers, safety fuse, matches, et cetera.

The term "highway" whenever used in this article shall be held to mean and include any public street or public highway, or any steam, electric or other railroad.

The term "building" whenever used in sections three hundred and fifty-eight to three hundred and sixty-five, inclusive, shall be held to mean and include only any building regularly occupied in whole or in part as a habitation for human beings, and any church, schoolhouse, railway station or other building where people are accustomed to assemble.

The term "person" whenever used in this article shall be held to mean and include corporations and joint stock associations, as well as natural persons.

The term "factory building" whenever used in this article shall be held to mean any building or other structure containing explosives, in which the manufacture of explosives or any part of the manufacture is carried on.

The term "magazine" whenever used in this article shall be held to mean and include any building or other structure used to store explosives.

The term "efficient artificial barricade" whenever used in this article shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet.

Words used in the singular number shall include the plural and the plural the singular. (*Added by L. 1911, ch. 451, and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 359. Regulations regarding quantity, distance from buildings, et cetera.
—No person shall manufacture, have, keep or store explosives except in compliance with this article. The quantity of explosives that may be lawfully had, kept or stored in any factory building or magazine shall depend upon the distance that such factory building or magazine is situated from buildings and highways, and the protection offered by natural or effi-

§ 359.

State fire marshal.

L. 1912, ch. 453.

cient artificial barricade to such buildings or highways. Whenever any of the quantities given in column one of the quantity and distance table hereinafter set forth is had, kept or stored in any factory building or magazine in this state, the distance that any quantity given in column one of said table may be lawfully had, kept or stored from buildings is the distance set opposite said quantity in column two of said table, and the distance that any quantity given in column one of said table may be lawfully had, kept or stored from highways is the distance set opposite said quantity in column three of said table. The quantity and distance table governing the making, keeping or storing of explosives is as follows:

| Column 1. Quantity that may be lawfully kept or stored from nearest building or highway. | | Column 2. Distance from nearest building. Feet. | Column 3. Distance from nearest highway. Feet. |
|--|------|---|--|
| Lbs. | Lbs. | | |
| Over 100 and not over 200..... | | 360 | 220 |
| Over 200 and not over 300..... | | 520 | 310 |
| Over 300 and not over 400..... | | 640 | 380 |
| Over 400 and not over 500..... | | 720 | 430 |
| Over 500 and not over 600..... | | 800 | 480 |
| Over 600 and not over 700..... | | 860 | 520 |
| Over 700 and not over 800..... | | 920 | 550 |
| Over 800 and not over 900..... | | 980 | 590 |
| Over 900 and not over 1,000..... | | 1,020 | 610 |
| Over 1,000 and not over 1,500..... | | 1,060 | 640 |
| Over 1,500 and not over 2,000..... | | 1,200 | 720 |

| Column 1. Quantity that may be lawfully kept or stored from nearest building or highway. | | Column 2. Distance from nearest building. Feet. | Column 3. Distance from nearest highway. Feet. |
|--|------|---|--|
| Lbs. | Lbs. | | |
| Over 2,000 and not over 3,000..... | | 1,300 | 780 |
| Over 3,000 and not over 4,000..... | | 1,420 | 850 |
| Over 4,000 and not over 5,000..... | | 1,500 | 900 |
| Over 5,000 and not over 6,000..... | | 1,560 | 940 |
| Over 6,000 and not over 7,000..... | | 1,610 | 970 |
| Over 7,000 and not over 8,000..... | | 1,660 | 1,000 |
| Over 8,000 and not over 9,000..... | | 1,700 | 1,020 |
| Over 9,000 and not over 10,000..... | | 1,740 | 1,040 |
| Over 10,000 and not over 20,000..... | | 1,780 | 1,070 |
| Over 20,000 and not over 30,000..... | | 2,110 | 1,270 |
| Over 30,000 and not over 40,000..... | | 2,410 | 1,450 |
| Over 40,000 and not over 50,000..... | | 2,680 | 1,610 |
| Over 50,000 and not over 60,000..... | | 2,920 | 1,750 |

| L. 1912, ch. 453. | State fire marshal. | §§ 360, 361. |
|--|---------------------|--------------|
| Over 60,000 and not over 70,000..... | 3,130 | 1,880 |
| Over 70,000 and not over 80,000..... | 3,310 | 1,990 |
| Over 80,000 and not over 90,000..... | 3,460 | 2,080 |
| Over 90,000 and not over 100,000..... | 3,580 | 2,150 |
| Over 100,000 and not over 200,000..... | 3,670 | 2,200 |
| Over 200,000 and not over 300,000..... | 4,190 | 2,510 |
| Maximum allowed. | | |

No quantity in excess of three hundred thousand pounds shall be had, kept or stored in any factory building or magazine in this state. Whenever the building or highway to be protected is effectually screened from the factory building or magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected will pass through such intervening natural or efficient artificial barricade, and any straight line drawn from the top of any side wall of the factory building or magazine to any point twelve feet above the center of the highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distance given in columns two and three of the quantity and distance table may be reduced one-half. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 360. Explosives kept in suitable containers.—Except only at a factory building no person shall have, keep or store explosives at any place within this state unless such explosives are completely enclosed and encased in tight metal, wooden or fibre containers, and, except while being transported or in the custody of a common carrier awaiting shipment or pending delivery to a consignee, shall be kept and stored in a magazine constructed and operated as provided in section three hundred and sixty-one of this article, and no person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held. All containers in which explosives are held shall be plainly marked with the name of the explosives contained therein. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 361. Magazines in which explosives may lawfully be kept or stored shall be of two classes, as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding fifty pounds, and shall be constructed of brick, concrete, iron or wood covered with iron, and shall have no openings except for ventilation and entrance. The doors of such magazine must at all times be kept closed and locked, except when necessarily opened for the purpose

§§ 362, 363.

State fire marshal.

L. 1912, ch. 453.

of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks of fire through the same. Upon each side and each end of such magazine, or upon its barricade, there shall at all times be kept conspicuously posted a sign, with words "Magazine—Explosives—Dangerous" legibly printed thereon in letters not less than six inches high. No matches or fire of any kind shall at any time be permitted in any such magazine. No package of explosives shall at any time be opened in or within fifty feet of any magazine, nor shall any open package of explosives be kept therein. Magazines in which more than fifty pounds of explosives are kept and stored must be detached, and those where more than five thousand pounds are kept and stored must be located at least two hundred feet from any other magazine.

(b) Magazines of the second class shall be made of fireproof material, or wood covered with sheet iron, and not more than fifty pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign, with words "Magazine—Explosives—Dangerous" legibly printed thereon, and not more than two such magazines shall be had or kept in any building. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 362. **Caps not kept in magazine.**—No blasting caps, or other detonating or fulminating caps or detonators, shall be kept or stored in any magazine in which explosives are kept or stored. (*Added by L. 1911, ch. 451 and amended by L. 1912, ch. 453, in effect Apr. 6, 1912.*)

§ 363. All persons engaged in keeping or storing explosives on the date when the provisions of this section take effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives after the provisions of this section take effect shall, before engaging in the keeping or storing of explosives, make a report to the state fire marshal on blanks to be furnished by him stating:

(1.) The location of the magazine, if then existing, or in case of a new magazine, the proposed location of such magazine.

(2.) The kind of explosives that are kept or stored or intended to be kept or stored and the maximum quantity that is intended to be kept or stored thereat.

(3.) The distance that such magazine is located or intended to be located from the nearest buildings and highways.

The state fire marshal shall, as soon as may be after receiving such report, cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine, as soon as may be after same is constructed. If upon such inspection the magazine is found to be constructed

in accordance with the specifications provided in section three hundred and sixty-one of this act, the state fire marshal shall determine the amount of explosives that may be kept or stored in such magazine by reference to the quantity and distance table set forth in section three hundred and fifty-nine in this act and shall issue a certificate to the person applying therefor, showing compliance with the provisions of this act, which certificate shall set forth the maximum quantity of explosives that may be had, kept or stored in said magazine. Such certificate of compliance shall be valid until cancelled for cause as hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the certificate of compliance therefor, such as the erection of buildings nearer said magazine or the opening of highways, the state fire marshal shall modify or cancel such certificate in accordance with the changed conditions. Whenever any person to whom a certificate of compliance has been issued keeps or stores in the magazine covered by such certificate of compliance any quantity of explosives in excess of the maximum amount set forth in such certificate of compliance issued therefor, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance and to order the removal of all explosives stored in said magazine as provided in section three hundred and fifty-six of this article.

Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than five dollars nor more than twenty-five dollars. Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 364. Transportation.—Every vehicle while carrying explosives shall display upon an erect pole on the front end of such vehicle and at such height that it shall be visible from all directions a red flag with the word “danger” printed, stamped or sewed thereon in white letters. Such flag shall be at least eighteen inches by thirty inches in size, and the letters thereon shall be at least twelve inches in height.

(a) It shall be unlawful for any person in charge of a vehicle containing explosives to smoke in or upon such vehicle, to drive the vehicle while intoxicated, to drive the vehicle or to conduct himself in a careless or reckless manner or to load or unload such vehicle in a careless or reckless manner or while smoking or intoxicated.

(b) It shall be unlawful for any person to place or carry, or cause to be placed or carried in or upon any vehicle containing explosives any metal tool or other piece of metal.

(c) It shall be unlawful for any person to place or carry in or upon a ve-

§§ 365-369.

State fire marshal.

L. 1912, ch. 453.

hicle containing explosives any exploders, detonators, blasting caps or other explosive material, or to carry in or upon any such vehicle any matches or any mechanical device for producing spark, flame or heat.

Nothing contained in this article shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission, nor to the transportation or use of blasting explosives for agricultural purposes or in quantities not exceeding five pounds at any one time. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 365. **Records of sale.**—Every person selling or giving away explosives within this state shall keep at all times an accurate journal or book of record in which must be entered from time to time, as it is made, each and every sale made by such person in the course of business, or otherwise, of any quantity of explosives. Such journal or record book must show in a legible writing, to be entered therein at the time, a complete history of each transaction stating the name and quantity of explosives sold, name, place of residence and business of the purchaser, name of individual to whom delivered, with his or her address. Such journal or book of record must be kept by the person so selling explosives in his or their principal office or place of business, at all times subject to the inspection and examination of the state fire marshal, his deputies, and the police authorities of the county or municipality where same is situated, on proper demand therefor. Nothing in this section, however, shall apply to persons selling or giving away explosives in quantities of five pounds or less at any one time. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 366. **Exceptions.**—Nothing contained in this article in sections three hundred and fifty-eight to three hundred and sixty-five, inclusive, shall be deemed to include gasoline, kerosene, naphtha, turpentine or benzine. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 367. **Fire arms.**—No person shall discharge any fire arms within five hundred feet of any magazine or factory. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 368. **Penalties.**—Whoever fails to comply with or violates any provisions of sections three hundred and fifty-eight to three hundred and sixty-seven, inclusive, shall be guilty of a misdemeanor. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 369. **Powers of the state fire marshal, deputies and assistants.**—The state fire marshal or his deputies may, in addition to the investigation made by any of his assistants at any time investigate as to the origin or circumstances of any fire or explosion occurring in this state. The state fire marshal, his deputies and assistants shall have the power to summon witnesses and compel them to attend before them, or either of them, and

L. 1912, ch. 453.

State fire marshal.

§§ 370, 371.

to testify in relation to any matter which is by the provisions of this article a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent or necessary to the inquiry, and shall have the power to administer oaths and affirmations to any person appearing as witness before them; such examination may be public or private as the officers conducting the investigation may determine.

No person shall be excused from attending before the said fire marshal or any of his deputies or assistants when summoned so to attend, nor, when ordered so to do shall they be excused from testifying or producing any books, papers or documents before such officer upon any investigation, proceeding or inquiry instituted under the provisions of this article, upon the ground or for the reason that the testimony or the evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required to testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding; if, after any such examination of witness, or any investigation, the state fire marshal or any of his deputies or assistants is of the opinion that the facts in relation to a fire or explosion indicate that a crime has been committed, he shall present the testimony taken on such examination, together with any other data in his possession to the district attorney of the proper county, with a request that he institute such criminal proceedings as such testimony or data may warrant.

The state fire marshal or his deputies or any of his assistants may at all reasonable hours enter any building or premises within his jurisdiction for the purpose of making an inspection which, under the provisions of this article, he or they may deem necessary to be made. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 370. **Records.**—The state fire marshal shall keep in his office a record of all fires and explosions occurring in the state and of all the facts concerning the same, including statistics as to the extent of loss of life and the damage to property caused thereby, and whether the damages to property were covered by insurance, and if so, in what amount. Such records shall be made daily from the reports made to him by his assistants under the provisions of this article. All such records shall be public except any testimony taken in an investigation under the provisions of this article which the fire marshal in his discretion may withhold from the public. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 371. **Annual report.**—The state fire marshal shall, annually, on or before the fifteenth day of February, transmit to the legislature a full report of his proceedings under this article and such statistics as he may wish to include therein; he shall also recommend any amendments to the law which

§§ 372-375.

State fire marshal.

L. 1912, ch. 453.

in his judgment shall be desirable. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 372. **Witnesses.**—Any witness who refuses to obey a summons of the state fire marshal, his deputies or his assistants or who refuses to be sworn or testify, or who disobeys any lawful order of the state fire marshal, his deputies or his assistants in relation to an investigation instituted by him or them, or fails or refuses to produce any books, paper or document touching on any matter under investigation or examination, or who is guilty of any contemptuous act after being summoned to appear before him, or either of them, to give testimony in relation to any matter or subject under examination or investigation as aforesaid, may be punished as for contempt of court. Each person summoned to appear and testify before the state fire marshal or any of his deputies and assistants shall receive from the state treasurer upon the audit of the state fire marshal, for mileage and fees, such sum or sums, as provided for witnesses in section thirty-three hundred and eighteen of the code of civil procedure. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 373. **Duties of district attorney.**—The district attorney of any county upon request of the state fire marshal, his deputies or his assistants, shall assist such officers upon an investigation of any fire or explosion, which, in their opinion, is of a suspicious origin. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 374. **Compensation of assistants.**—Except in cities having over seventy-five thousand inhabitants all assistants of the state fire marshal not receiving a salary from the state of New York shall receive, upon the audit of the state fire marshal, fifty cents for each report of each separate fire or explosion reported to the state fire marshal and fifty cents for each order served under the provisions of this article, and in addition there shall be paid to such assistants of the state fire marshal, whose duty it shall have been to make and who actually made an investigation or an inspection, the sum of fifteen cents for each mile traveled to the place of fire or explosion or to premises inspected, and, in the discretion of the state fire marshal, where an investigation has been had or an inspection has been made by his direction a sum not to exceed two dollars for each day's service spent in such investigation or inspection, fifty cents for each fire drill held under their supervision and also postage and other actual and necessary expenses incurred in the performance of their duty under this article. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

§ 375. **Penalties.**—All penalties, fees or forfeitures collected under the provisions of this article shall be paid into the treasury of the state of New York. (*Added by L. 1912, ch. 453, in effect Apr. 16, 1912.*)

INTERPRETERS.

Temporary appointment; Judiciary L., § 388.

JUDGMENTS.**Code of Civil Procedure.**

§ 1245. **Certain clerks to keep docket books.**—Each county clerk, and the clerk of the city court of the city of New York, must keep one or more books, ruled in columns, convenient for making the entries prescribed in section twelve hundred and forty-six; in which he must docket, in its regular order, and according to its priority, each judgment which he is required by this article to docket. The expense of procuring new books when necessary is a county charge. The judgment dockets kept by the county clerk of New York county must hereafter be kept in two separate sets of books, one set to be designated and used for judgment debtors that are individuals, including all individual members of a copartnership or of a firm doing business under a firm name or style as stated in the title of the action, and the other set to be designated and used for judgment debtors that are corporations, a joint stock company, a copartnership or a firm name or style under which a person or persons are doing business; and each set of such judgment dockets must have a separate volume or volumes for each letter of the alphabet, and each judgment docket book shall have its letter, and the year or years of its entries plainly marked on its back and cover and on every page. A judgment docket for judgment debtors that are individuals shall contain the names of those judgment debtors whose last name begins with the letter marked on the back of the volume. Each volume shall also have a marginal page index showing each letter of the alphabet in order. And a page of such judgment docket for judgment debtors that are individuals shall contain the names of those judgment debtors whose first name begins with the letter or whose first initial is the letter marked on the marginal index for that page; except that there shall be at the back of each of such volumes blank pages not indexed which shall contain the names of those judgment debtors whose first names or initials are stated in the title of the action to be unknown or fictitious. And a judgment docket for those judgment debtors that are corporations, a joint stock company, a copartnership or a firm name or style under which a person or persons are doing business shall contain the names of those judgment debtors the first letter or initial of whose name as it appears, following the prefixed articles "A," "An" or "The," is the letter marked on the page and on the back of the book. And there must be prepared and kept two separate sets of volumes for judgment dockets, designated, lettered, indexed and marked as hereinbefore provided in which there shall be entered in the same manner as hereinbefore directed to be entered,

SUP. III—20

in their regular order and according to their priority and as soon as it may be practicable to have it done, the names of judgment debtors against whom judgments have been docketed within ten years of the time of the making of the entry in such volumes. And the county clerk of New York county shall prepare and keep a card index, supplemental to the judgment docket books hereinbefore provided for, wherein he shall enter and arrange in alphabetical order the names of all judgment debtors hereinbefore directed to be docketed. And with every entry of a judgment in an action begun on or after September first, nineteen hundred and eleven, there shall be entered as a part of such entry the number of the action and the year in which it was begun. (*Amended by L. 1912, ch. 344, in effect Apr. 15, 1912.*)

§ 1245-a. **Current docket books.**—The county clerk of New York county must keep books to be known as current docket books. Each half page of space in each book shall be consecutively numbered in a series of consecutive numbers for each year and shall be devoted to one action. On a half page so numbered the clerk shall enter the title of the action having the same consecutive number for that year, with the names of the plaintiffs and defendants and attorneys in full, and in chronological order a brief description of each paper as it is filed, together with the date of filing thereof, also the verdict, report or decision, if any, rendered in the action as of the date of the rendering thereof, also all orders and judgments in the action. All interlocutory and provisional proceedings, and proceedings supplementary to execution, shall be entered on the same half page of the docket as the action out of which they arise, except in actions where the entries are so voluminous as to require one or more additional half pages of space; in which case the entries shall be continued under the same number upon other pages of that or a subsequent docket book, reference thereto being entered at the end of the first and all additional half pages, and the clerk upon entering the description of a paper filed in an action shall enter upon its front page and opposite the title caption the number of the action and the filing date and number of entry of the paper. There shall be kept an alphabetical index of all the actions entered in such current docket books during any year, which index shall consist of two sets of separate volumes, one set to be designated and used for indexing actions wherein the plaintiff or plaintiffs are individuals, including all individual members of a copartnership or of a firm doing business under a firm name or style as stated in the title of the action, and the other set to be designated and used for indexing actions wherein the plaintiff or plaintiffs are corporations, a joint stock company, a copartnership or a firm name or style under which a person or persons are doing business. Each of such sets of index books shall have a separate volume or volumes for each letter of the alphabet, and the volumes designated and used for indexing actions wherein the plaintiff or plaintiffs are individuals shall have a marginal page index

showing each letter of the alphabet in order, and shall have the designation of its set of books, its letter and the year or years of its entries plainly marked on its back and cover and on every page. And all such actions shall be indexed in such index volumes according to all the plaintiffs of each title, in the same manner as it is provided in section twelve hundred and forty-five that judgment debtors shall be docketed in the judgment docket books, and in every case the serial number of the action shall be entered opposite the name indexed. Within three days after a summons, writ or other original process is served in an action in the supreme court, New York county, the attorney or party causing the same to be served shall file said process with proof of service in the office of the clerk who has custody of the records of the court in which the action is brought. The said clerk shall, upon receipt thereof, stamp the same upon its front page with a certain number to be one of the series for that year, and enter in the current docket book, on the half page bearing the same number, the names of the parties as they appear on said process, and the name and address of the attorney who issued the same. And the attorney or party causing such summons, writ or original process to be served shall, upon demand, give to the party so served, or to the attorney of such party, the number so stamped by the clerk, stamped or indorsed upon a paper with the title of the action, and the name and address of the attorney or party who made or caused the service to be made. All papers in the action shall bear the same number and year as the summons, writ or other original process, which number shall constitute a part of the title of such action. All original papers in the action, with proof or admission of their service, not later than the day after their service, shall be filed with or mailed to the clerk who stamped the number on the summons, writ or other original process. All papers to be hereafter filed with the clerk of New York county must be flat and filed flat. The word "action" as used in this section shall mean "action or special proceeding." Whenever a paper pertaining to any action begun prior to the passage of this act is filed in the office of the clerk who has custody of the records of the court in which the action is pending the clerk shall upon receipt of such paper stamp the same upon the front page with a certain number, to be one of a series of consecutive numbers for the year in which said action was brought, and shall enter in a current docket book prepared for that year the names of the parties to the action and the name and address of the attorney who filed the paper, in the same manner as if such paper were the original summons, writ or other process in such action; and the clerk shall as soon as practicable thereafter stamp or indorse that number upon every paper in that action theretofore filed in his office and shall enter such papers, as they are so numbered, in such docket book in the same manner as if such docketing had been begun with the first paper in such action. And all such entries in such docket books of actions begun prior to the passage of this act shall be indexed in separate volumes for each letter of the alphabet, and for corpo-

rations, a joint stock company, a copartnership or a person or persons doing business under a firm name or style, as hereinbefore provided, in the same manner as actions begun after the passage of this act are hereinbefore directed to be indexed. Whenever an action is transferred to another court, or the place of trial changed, the clerk to whom the papers in such action are delivered shall enter in the current docket book in which he makes entries copies of all entries theretofore made in said action, and shall continue to make subsequent entries therein in the same manner as if the process had originally been filed with him. All papers numbered and docketed as herein directed shall be filed together; and on the entry of final judgment in any action all the papers in that action shall be arranged in the order of the dates on which they were filed and shall be fastened or bound together flat with the judgment-roll and so filed. The county clerk of New York county shall appoint, subject to the rules of the state civil service commission, such subordinates as may be necessary for the work required to be done in his office under the provisions of this act, and shall designate the positions and fix the compensation of such subordinates, subject to the approval of the board of estimate and apportionment of the city of New York; and the comptroller of the city of New York shall issue and sell certificates of indebtedness to an amount sufficient to provide for the payment of the salaries of such subordinates during the year nineteen hundred and twelve, which shall be a charge against the county of New York, and an amount sufficient to pay and discharge the certificate so issued shall be included in the budget made by said board of estimate and apportionment for the year nineteen hundred and thirteen. (*Amended by L. 1912, ch. 344, in effect Apr. 15, 1912.*)

L. 1912, ch. 253. Destruction of papers; admission to practice. §§ 15, 87, 88.

JUDICIARY LAW.

(L. 1909, ch. 35.)

§ 15. Disqualification of judge by reason of interest or consanguinity.

The interest which will disqualify a judge to sit in a cause need not be large, but it must be real; it must be certain and not merely possible or contingent; it must be one which is visible, demonstrable and capable of precise proof. *People v. Whitridge* (1911), 144 App. Div. 493, 129 N. Y. Supp. 300.

Where a case has been tried before a justice who was disqualified to sit therein, it is proper practice to move at special term before another justice to set aside all proceedings had before the first judge. *People v. Whitridge* (1911), 144 App. Div. 493, 129 N. Y. Supp. 300.

Application to surrogate.—*People ex rel. Kennedy v. Gill* (1911), 147 App. Div. 924, mem.

§ 87. Appellate division may direct county clerk or commissioner of jurors to destroy papers.—The appellate division of the supreme court, in any department, may, upon petition, by order made at any term thereof direct a county clerk or a commissioner of jurors to destroy any papers now deposited or filed, or hereafter to be deposited or filed in his office, which the court deems to have become useless. Provided, however, that in those counties where commissioners of records have been appointed, a copy of said petition, if for the destruction of records in the office of a county clerk, shall be served upon the commissioner of records at least five days before application is made to said court. But this provision does not authorize the destruction of a judgment-roll, or a paper incorporated or necessary to be incorporated in a judgment-roll. (*Amended by L. 1912, ch. 252, in effect April 10, 1912.*)

§ 88. Admission to and removal from practice by appellate division.

Subdivisions 1 and 2 amended by L. 1912, ch. 253, in effect April 10, 1912, to read as follows:

1. Upon the state board of law examiners certifying that a person has passed the required examination, the appellate division of the supreme court in the department in which such person shall have resided for at least six months prior to such application, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state.

2. The supreme court shall have power and control over attorneys and counsellors-at-law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice as such who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to re-

§§ 109, 115.

Stenographers; official referees.

L. 1912, ch. 173.

voke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice.

Attorney disbarred for fraud, malpractice and for converting money of his client to his personal use. *Matter of Shamroth* (1912), 148 App. Div. 828.

Attorney disbarred for appropriating money belonging to his client, *Matter of Schwarzkopf* (1911), 146 App. Div. 930, 131 N. Y. Supp. 385; for converting to his personal use money advanced by his client to be applied upon a mortgage and for giving false testimony in the proceeding to disbar him, *Matter of Levine* (1911), 148 App. Div. 296; for misappropriating moneys of his client and for giving perjured testimony in the proceeding to disbar him, *Matter of Smith* (1911), 148 App. Div. 291; for forging the indorsement of a check, appropriating a portion of the proceeds, and for advising a client under indictment to forfeit his bail, *Matter of Pascal* (1911), 146 App. Div. 836, 131 N. Y. Supp. 823; for making a contract with a proposed expert witness to pay him a percentage of the recovery if he would testify in a negligence action. In *Matter of Schapiro* (1911), 144 App. Div. 1, 128 N. Y. Supp. 852. An attorney for the executor of an estate disbarred for appropriating to his own use property of the estate which came into his hands. *Matter of Streckler* (1911), 146 App. Div. 827, 131 N. Y. Supp. 766.

Attorney suspended for misappropriating moneys belonging to his client. *Matter of Greenberg* (1911), 146 App. Div. 945, 131 N. Y. Supp. 531; *Matter of Sayer* (1911), 146 App. Div. 928; and for his failure to prosecute an appeal, having accepted a retainer to do so, and for having falsely testified in the proceeding to disbar him. *Matter of Voxman* (1911), 148 App. Div. 286.

Attorney disciplined for failure to pay over moneys ordered by the Surrogate. *Matter of Henderson* (1911), 146 App. Div. 944, 131 N. Y. Supp. 544.

Reference on proceeding for disbarment ordered. *Matter of Barnard* (1911), 145 App. Div. 910.

Re-hearing of charges, newly discovered evidence offered by an attorney who has been disbarred held to be insufficient. *Matter of Harrington* (1911), 146 App. Div. 219, 130 N. Y. Supp. 920.

§ 109. Appointment of stenographers or confidential clerks by justices of the appellate division.—The justices of the appellate division of the supreme court in the first department, or a majority of them, must appoint, and may at pleasure remove, a stenographer for each part or term of the supreme court; and three stenographers, either male or female, for the appellate division of the first department.

Each justice of the appellate division in each of the third and fourth departments shall have power to employ the services of a stenographer or a confidential clerk. (*Amended by L. 1912, ch. 173, in effect Apr. 5, 1912.*)

§ 115. Appointment of official referees in first and second judicial departments.—The appellate divisions of the supreme court in the first or second departments may from time to time appoint any former judge of the court of common pleas and justice of the supreme court, who shall have served as such judge and justice for eight years or more in the first judicial district, and who after such service was retired before the expiration of his term because he had arrived at the age of seventy years, and any justice or justices or any former justice or justices of the supreme court in the first judicial department or the judicial districts situated in the

L. 1912, ch. 323.

Official referees; compensation.

§§ 116, 153.

second judicial department who shall have served as a judge or justice of a court of record for fourteen years or more, and who after such service shall in his sixty-fifth year or thereafter have retired or who shall hereafter retire from his or their said office, by expiration of term or resignation or because he or they shall have arrived at the age of seventy years, as official referee or referees, for the term of his or their life. To any of such official referees may be referred any action, matter or proceeding pending in said supreme court, referable by statute or the rules and practice of said court, in which the justice making the order of reference shall deem that for any reason the expense of such reference should not be borne by the parties to such action, matter or proceeding. (*Amended by L. 1911, ch. 844 and L. 1912, chs. 62 and 323, in effect Apr. 15, 1912.*)

§ 116. Compensation of official referees in first and second judicial departments.—The county of New York in the case of official referees appointed by the appellate division of the supreme court in the first judicial department, and the comptroller of the state of New York, in the case of official referees appointed by the appellate division of the supreme court in the second judicial department, shall pay annually to each of the official referees appointed pursuant to section one hundred and fifteen of this chapter a sum equal to the annual compensation now paid to such official referee or referees by the said county of New York, and said referee or referees shall not charge or receive from the parties to the action, matter or proceeding referred any fee or compensation for any service rendered as such referee, but may charge the said parties with any disbursements actually incurred by him or them in the performance of his or their duties as such referee, provided the same be allowed by the court. If the services of a stenographer should be required in the action, matter or proceeding so referred to such official referee, such stenographer shall be selected by said referee from the official stenographers of the supreme court, and the parties to the action, matter or proceeding shall not be required to pay any of the fees of such stenographer for taking the testimony or furnishing one copy thereof to the referee. To provide the money necessary to pay the salaries of said official referees appointed by the appellate division of the supreme court in the second judicial department, the comptroller of the state shall annually apportion a sum equal to the total amount of said salaries among the counties composing the second judicial department, and cause the same to be levied and collected on the real and personal property in said counties in the same manner in which state taxes are levied and collected. (*Amended by L. 1911, ch. 844 and L. 1912, ch. 323, in effect Apr. 15, 1912.*)

§ 153. Governor may appoint extraordinary terms and name justices to hold them.

Constitutionality.—In 1906 the Governor of the state had authority under section

§§ 160, 251, 262, 271.

Clerks and deputies. L. 1912, chs. 118, 154, 156, 377.

234 (now Jud. L., § 153) of the Code of Civil Procedure to appoint an extraordinary Trial Term of the Supreme Court and to designate the time and place of holding the same without action on the part of the Appellate Division. Said section of the Code was not unconstitutional. *People v. Valentine* (1911), 147 App. Div. 31, 131 N. Y. Supp. 733.

§ 160. Appointment of clerks in certain judicial districts.—*Subdivision 4, amended by L. 1912, ch. 118, in effect Apr. 3, 1912, as follows:*

4. Each of the resident trial justices of the supreme court, in the fifth judicial district, may appoint, and at pleasure remove, a confidential clerk to said justice, by an instrument in writing under his own hand, to be filed in the office of the secretary of state.

Subdivisions 5 and 6 repealed by L. 1912, ch. 118, in effect Apr. 3, 1912.

§ 251. Clerks in courts of record within the territory of the first and second judicial districts not to be appointed referees, receivers, or commissioners.—No person holding the office of clerk, deputy clerk, special deputy clerk, assistant special deputy clerk, or assistant in the clerk's office, of a court of record within the first and second judicial districts or territory comprising the same, shall hereafter be appointed by any court or judge, a referee, receiver or commissioner. (*Amended by L. 1912, ch. 154, in effect Apr. 4, 1912.*)

§ 262. Compensation of clerks to judges of court of appeals.—The clerk appointed by each judge of the court of appeals, except the chief judge, shall be entitled to a compensation to be fixed by such judge, not exceeding twelve hundred dollars a year; but a clerk so appointed who is also a stenographer shall receive a compensation to be fixed by such judge not exceeding fifteen hundred dollars a year. The confidential clerk to the chief judge of the court of appeals shall receive a salary of twenty-five hundred dollars. The compensation herein provided shall be paid monthly by the comptroller upon the certificate of the judge. (*Amended by L. 1912, ch. 156, in effect Apr. 4, 1912.*)

§ 271. Compensation of clerks and deputy clerks of appellate division.—*Subdivision 6, amended by L. 1912, ch. 377, in effect Apr. 15, 1912, as follows:*

6. The salary of the deputy clerk of the appellate division in the third department shall be not to exceed fifteen hundred dollars per annum and the salary of the deputy clerk of the appellate division in the fourth department shall be two thousand dollars per annum, to be paid by the comptroller of the state to such appointees monthly, and annually apportioned by him among the counties constituting the fourth judicial department and refunded by such counties to the state treasury, and for the additional services of acting as librarian the deputy clerk in the third department shall receive the additional sum of five hundred dollars per annum, to be paid in the same manner as his salary as deputy clerk.

L. 1912, chs. 118, 202, 538. Clerks and stenographers. §§ 279, 288, 303, 307.

Subdivision 9 amended by L. 1912, ch. 119, in effect Apr. 3, 1912, as follows:

9. The compensation of the consultation clerk to the justices of the appellate division of the fourth department shall be fixed by said justices at not to exceed three thousand five hundred dollars per year, to be paid in the same manner as the salary of the deputy clerk of the said department.

§ 279. **Salary of clerks to justices of supreme court.**—*Subdivision 4, amended by L. 1912, ch. 118, in effect Apr. 3, 1912, as follows:*

4. Each of the clerks to the justices of the supreme court in the fifth judicial district appointed pursuant to subdivision four of section one hundred and sixty of this chapter shall receive an annual salary of eighteen hundred dollars per annum, to be paid by the comptroller of the state, in equal quarterly payments, upon the certificate of the justice appointing him. Such salaries shall be a charge upon the fifth judicial district.

Subdivisions 5 and 6 repealed by L. 1912, ch. 118, in effect Apr. 3, 1912.

§ 288. **Compensation of the record clerks of the court of general sessions of the peace in and for the county of New York.**—The compensation of each of the record clerks of the court of general sessions of the peace in and for the county of New York shall be fixed by the judges of said court, or a majority of them, at a sum not to exceed three thousand dollars per annum. (*Added by L. 1912, ch. 538, in effect Apr. 19, 1912.*)

§ 303. **Stenographers must furnish copies of proceedings to parties on payment of fees.**—Each stenographer specified in this chapter or the code of civil procedure, must, upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party, or his attorney in a civil cause, in which he has attended the trial or hearing, a copy, written out at length from his stenographic notes, of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment, by the person requiring the same, of the fees allowed by law. If the district attorney, the attorney-general or the judge presiding at the trial in a criminal cause, requires such a copy, the stenographer is entitled to his fees therefor; but he must furnish it, upon receiving a certificate of the sum to which he is entitled. The amount thereof must be paid by the treasurer of the county where the trial is held, upon the certificate of the district attorney, attorney-general or the judge presiding at the trial, from the court fund, or the fund from which jurors are paid. (*Amended by L. 1912, ch. 202, in effect Apr. 8, 1912.*)

§ 307. **Compensation of stenographers or confidential clerks appointed by justices of appellate division.**—1. The stenographers appointed by the justices of the appellate division of the first department for each part or term of the supreme court and for the appellate division pursuant to section one hundred and nine of this chapter shall receive an annual salary of three thousand dollars, payable in equal monthly installments.

§§ 343, 347, 388, 474.

Attendants and interpreters.

L. 1912, chs. 120, 376.

2. The compensation of each stenographer or confidential clerk appointed by the justices of the appellate division of the third and fourth departments shall not exceed eighteen hundred dollars a year to be paid by the comptroller of the state upon the certificate of the justice by whom he is employed. (*Amended by L. 1911, ch. 543 and by L. 1912, ch. 173, in effect Apr. 5, 1912.*)

§ 343. Number of attendants upon courts in certain counties.

Deputy sheriffs, designated pursuant to a special act and receiving an annual salary thereunder by virtue of a resolution of the Board of Supervisors, are not entitled to the mileage specified in this section. *People ex rel. Hewitt v. Hoyland* (1911), 145 App. Div. 11, 129 N. Y. Supp. 500.

§ 347. Compensation of attendants of appellate division in third and fourth departments.—Each of the attendants appointed by the justices of the appellate division of the third department shall receive a compensation to be fixed by the justices, not exceeding eighteen hundred dollars a year payable monthly, but the compensation of all such attendants shall not exceed in the aggregate thirty-six hundred dollars. Each of the attendants appointed by the justices of the appellate division of the fourth department shall receive a compensation to be fixed by the justices which shall not exceed twelve hundred dollars per year, payable monthly. Such attendants shall also be entitled to receive their traveling expenses to and from their homes to the place where said sessions are held, not exceeding once in each term. The compensation of the attendants shall be paid by the comptroller of the state upon the certificate of the presiding justice of the department. (*Amended by L. 1910, ch. 304 and L. 1912, ch. 376, in effect Apr. 15, 1912.*)

§ 388. Temporary appointment of interpreters.—If the services of an interpreter be required in any court of record other than a local city court and there be no unemployed official interpreter to act therein, the court may appoint an interpreter to act temporarily in such court. Such interpreter shall before entering upon his duties file with the clerk of the court the constitutional oath of office. The court shall fix the compensation of such interpreter at not more than five dollars per day for each day's actual attendance by direction of the presiding judge or justice and such compensation shall be paid from the court fund of the county upon the order of the court. (*Added by L. 1912, ch. 120, in effect Apr. 3, 1912.*)

§ 474. Compensation of attorney or counsellor.—The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law, except that no agreement made hereafter between an attorney and a guardian of an infant for the compensation of such attorney, dependent upon the success of the prosecution by said attorney of a claim belonging to said infant, or by which such attorney is to receive a percentage of any recovery or award in behalf of such infant or a sum equal to a percentage of any such recovery or award,

shall be valid or enforceable unless made as hereinafter provided. An attorney may contract with the guardian of an infant to prosecute, by suit or otherwise, any claim for the benefit of an infant for a compensation to said attorney dependent upon the success in the prosecution of such claim, subject to the power of the court, as hereinafter provided, to fix the amount of such compensation. Whenever such a contract shall have been entered into between an attorney and a guardian of an infant, upon the recovery of a judgment, or the obtaining of an award in behalf of the said infant, or upon any compromise or settlement of such claim, the attorney may apply, upon notice to the guardian, to the judge or justice before whom the said action or proceeding was tried, in case the said action or proceeding was tried at a court held within this state; or to a special term of said court, in case the said action or proceeding was tried before some person other than a justice thereof, or said claim was compromised or settled after said suit was begun, or in case of the death or disability of the judge or justice before whom the action was tried; or to a special term of the supreme court in case the recovery, award, compromise or settlement was not had in any court of this state; such application shall set forth briefly the contract, the services performed by the attorney and pray that there be awarded to him a suitable amount out of the recovery, award, compromise or settlement obtained through his efforts as attorney on behalf of the infant; the court to which such application is made, upon being satisfied that due notice of the said application has been given to the said guardian, shall proceed summarily to determine the value of the services of said attorney, taking such proof from either the attorney or the guardian by affidavit, reference or the examination of witnesses before the said court, as to the said court may seem to be necessary and proper, and shall thereupon make an order determining the suitable compensation for the attorney for his services therein, which sum shall thereafter be received by the said attorney for his services in behalf of the said infant; and no other compensation shall be paid or allowed by the guardian for such services out of the estate of said infant. If a copy of such order awarding the compensation with notice of entry be thereafter served by the said attorney upon the adverse party to the said litigation or the person making such compromise or settlement and upon the custodian of the funds recovered, in case there be such custodian, such award shall become and constitute a lien to the amount thereof on behalf of the said attorney upon such recovery, award, settlement or fund. (*Amended by L. 1912, ch. 229, in effect Apr. 9, 1912.*)

Construction of contracts of retainer.—An attorney should draw a contract of retainer so plainly as not to require construction, and doubtful clauses will be construed most strongly against him, even though the client executed the contract upon independent advice. *Samuels v. Simpson* (1911), 144 App. Div. 466, 129 N. Y. Supp. 524.

An agreement for compensation prepared by an attorney if capable of more than one construction is to be construed most strongly in favor of the client. *Matter of Hawke* (1911), 148 App. Div. 326.

While agreements between attorney and client are subject to careful scrutiny by the court, they will be enforced unless tainted by fraud, mistake, false representations or other unfair inducement. *Audley v. Jester* (1911), 148 App. Div. 94.

Notwithstanding that the statute provides that an agreement with an attorney for services is not restrained by law, the court has power to inquire into the good faith of an agreement between attorney and client, even if reduced to writing. But where the parties are free to contract, their agreement will not be set aside unless fraud be perpetrated, undue influence exerted, or material facts misrepresented or suppressed, or unless the attorney by reason of his position obtains an unconscionable advantage over his client. Suit was brought by an attorney at law to obtain a decree adjudging an assignment of a portion of his client's interest in an estate, which was made collateral to a contract of retainer under which the attorney was to receive a contingent fee of twenty-five per cent. for establishing his client's interest in the estate. There was no proof of fraud, misrepresentation or concealment practiced by the attorney upon his client, but, on the contrary, it appeared that the conditions actually existing with respect to her claim upon the estate were fully disclosed, and that, having independent means to employ an attorney if she so desired, she was satisfied with the agreement for a contingent fee. It further appeared that the client did not repudiate the contract until her claim upon the estate had been successfully established, and that upon her objection to the contract the attorney voluntarily reduced his claim to twenty per centum. On all the evidence, it was held, that, under the circumstances, the amount to which the attorney was entitled under his retainer was not unconscionable, and that he was entitled to the relief sought. *Ransom v. Ransom* (1911), 147 App. Div. 835.

Under a contract for legal services in a condemnation proceeding providing that the attorney should receive twenty per cent. of any amount that may be awarded for said property over and above the lowest appraisal of the city experts, the attorney is not entitled to a percentage of the interest upon the award, which is automatically allowed by the charter from the date when the city takes possession to the date of the award, but is only entitled to his percentage upon the difference between the city's estimate of value and the principal sum allowed by the commissioner, with interest upon such percentage. *Matter of Hawke* (1911), 148 App. Div. 326.

By the terms of a written contract an attorney, if successful in an action against a savings bank to recover the amount claimed by plaintiff, was to receive a certain sum and the costs and disbursements. An order substituting another attorney for plaintiff, granted after the dismissal of the complaint at the trial, provided that the original attorney should have a lien on any recovery had upon the cause of action set forth in the complaint to the extent of the agreed amount. It was held, that the attorney was not entitled to compensation under the written contract but only to a lien for the value of services rendered, the amount of which was to be fixed if the plaintiff secured a judgment in the action. *De Angelis v. Bank of Savings* (1911), 74 Misc. 394, 132 N. Y. Supp. 295.

Duty of attorney under contract for contingent fee to continue in case.—Where attorneys are retained to prosecute an action under a contract for a contingent fee whereby they are to receive nothing if unsuccessful they are bound to continue in the case as long as their clients request it if they wish to receive compensation for their services, unless the client is guilty of a breach of the obligations of the contract. The fact that the client, through a mistake, fails to appear when the action is called for trial whereupon judgment against him is taken by default, does not justify the attorneys in at once withdrawing from the case and recovering for their services on a *quantum meruit*. *Seasongood v. Prager* (1911), 146 App. Div. 833, 131 N. Y. Supp. 771.

Authority of attorney to compromise action.—The authority of an attorney at law

extends to the management of the case in all the exigencies which arise during its progress, and, in the absence of fraud, his authority cannot be questioned by his client because of want of specific authority to do the act done or consented to. Thus, where a railroad company is sued for the conversion of a portion of a shipment of rails, its attorneys may compromise the action by permitting the plaintiff, a receiver, to take judgment upon the condition that a claim be filed with the plaintiff for the value of the whole shipment. Such compromise and the judgment in favor of the plaintiff entered thereon does not destroy the claim of the railroad company for the value of rails alleged to have been delivered to the company of which the plaintiff is receiver. *Clinton v. New York Central & H. R. R. Co.* (1911), 147 App. Div. 468, 131 N. Y. Supp. 881.

§ 475. Attorney's lien in action or proceeding.

Who entitled to lien.—An attorney at law, who actually has charge of a case, and acts as attorney and counsel with the knowledge and consent of the client, although not the attorney of record, has a lien upon the client's papers lawfully coming into his hands for use in the litigation for his expenditures in conducting the suit, although he has no statutory lien under this section. *Harding v. Conlon* (1911), 146 App. Div. 842, 131 N. Y. Supp. 903.

Determination of existence and amount of lien.—An attorney at law holding money belonging to his client has an absolute right to a summary determination by the court as to the existence and the amount of his lien. It is not necessary that he show that he has preserved the money intact; it is enough that he is ready, able and willing to account to the client. *Matter of Farrington* (1911), 146 App. Div. 590, 131 N. Y. Supp. 312.

Priority of attorneys lien over claim of third party, see *Pettibone v. Thomson* (1911), 72 Misc. 486, 130 N. Y. Supp. 284.

The lien of attorneys for services and disbursements is superior to the right of a party to offset judgment. *Wesley v. Wood* (1911), 73 Misc. 33, 132 N. Y. Supp. 248.

Proceeding to compel attorney to deliver papers.—The courts will not enforce ordinary contractual obligations not springing out of the relationship of attorney and client by a summary proceeding, even though the obligor happens to be an attorney. Such a proceeding to compel an attorney to deliver documents, which he claims to hold under an attorney's lien for compensation for services, cannot be maintained where the moving party denies that it ever retained the attorney in connection with the proceedings which placed in his hands the documents sought to be recovered, and expressly alleges that his retainer and employment were by another corporation, and an order in such case requiring the attorney to deliver papers, on execution by the claimant thereto of an undertaking to pay him such fees as may be determined to be due, is unauthorized. *Matter of Niagara, L. & O. Power Co.* (1911), 203 N. Y. 493.

§ 502. Qualifications of trial jurors.

Objection that a juror has not the property qualifications required must be taken at time jury is impaneled.—A verdict, either in a civil or criminal case, will not be set aside merely on the ground that one or more of the jurors had not the property qualification required by law. If the objection is not raised when the jury is drawn, the parties are concluded, although the fact may not have come to their knowledge until after the trial. This is the rule as to strictly legal and technical objections, not of objections which go to the character of the juror, and show that he labored under prejudices and prepossessions which rendered him incapable of acting impartially in the case, and that in all human probability there has not been a fair trial. Cases of the latter character might exist, in which it would be

§§ 753, 757, 774, 775.

Contempts.

competent and proper for the court to set aside a verdict. *People v. Cosmo* (1912), 203 N. Y. 91.

§ 753. Contempt punishable civilly.

Contempt proceedings must be based upon the violation of a clear and precise mandate of the court.—Thus, where a final injunction restraining defendants from performing as actors for any other person than the plaintiff was stayed but the stay was finally reversed on appeal, the defendants cannot be held in contempt for not obeying the decree during the period the stay was in effect. Where a plaintiff awarded a temporary injunction restraining the defendants from performing as actors for any other person consented to a modification of the injunction on the condition that he would pay a certain salary and give the defendants employment, but did not in fact perform the conditions imposed upon him by the order of modification, the defendants will not be punished for contempt for performing for other persons even though their agreement to perform for the plaintiff was not made in good faith. *Ziegfeld v. Norworth* (1911), 148 App. Div. 185.

An application to compel a husband suing for an annulment of his marriage, to pay alimony, should be made under this section rather than under section 1773 of the Code of Civil Procedure, which applies only to actions for divorce and separation. *Sutton v. Sutton* (1911), 145 App. Div. 845, 130 N. Y. Supp. 368.

Although a husband directed by a decree of divorce to pay weekly alimony to his wife for her support and the support and education of their child was guilty of a technical violation of the decree by paying a portion of the sum to his son in order to enable him to continue his education after the wife had refused to permit him to do so and by paying only the balance to the wife, yet his act was not such as to defeat, impair, impede or prejudice the rights of the wife and he should not be punished for contempt. *Brill v. Brill* (1911), 148 App. Div. 63.

Failure to originally appear for examination in pursuance of an order in supplementary proceedings, or upon an adjourned day, is a civil contempt and not a criminal one, and it is necessary that the order adjudging such contempt should recite that the court has found that the conduct of the party has been such as to defeat, impair, impede or prejudice the right or remedy of the other party to the proceeding. *Feinberg v. Kutcosky* (1911), 147 App. Div. 393, 132 N. Y. Supp. 9.

Denial of knowledge by judgment-debtor.—Where a judgment-debtor persistently denies knowledge as to matters that are palpably within his knowledge and within the scope of a proper examination he is punishable for contempt. *Matter of Becker v. Gerlich* (1911), 72 Misc. 157, 129 N. Y. Supp. 614.

An order must be served upon a party personally in order that he may be punished for civil contempt in failing to comply therewith. This is so although the party appeared by attorney and contested the motion for the order. *Curtis v. Powers* (1911), 146 App. Div. 246, 130 N. Y. Supp. 914.

§ 757. Order to show cause, or warrant to attach offender.

When order returnable.—Order to show cause why a judgment-debtor should not be punished for contempt need not be made returnable in less than eight days. *Matter of Becker v. Gerlich* (1911), 72 Misc. 157, 129 N. Y. Supp. 614.

§ 774. Length of imprisonment.

Commitment of executrix for wilful disobedience of an order of the Surrogate's Court directing her to pay over money belonging to the estate, see *People ex rel. Dean v. Markell* (1911), 72 Misc. 427, 131 N. Y. Supp. 383.

§ 775. Contempts; when court may release offender.

An application for a discharge under this section does not properly come before

L. 1912, ch. 147.

In Erie county.

§ 20.

the court in proceedings for a writ of habeas corpus, which are intended simply to test the legality of the relator's confinement. The question must be raised by motion in the court or before the judge issuing the original order for the relator's commitment. *People ex rel. Dean v. Markell* (1911), 72 Misc. 427, 131 N. Y. Supp. 383.

Inability to comply with decree.—Where a testamentary trustee has been removed and is charged in the final decree with a sum of money which he is directed to pay to his successor, his financial inability is no answer to a motion to punish him for contempt for his failure to obey the decree; but the question of his financial inability to comply with the decree must be determined upon a motion for discharge from imprisonment, under this section. It seems, that, where a trustee in such case seeks to be discharged from imprisonment on the ground of his inability to pay the amount directed by the decree, he must show that he has done whatever he could to obey it; and it is not enough to urge that it would do no good if he should try to obey. *Matter of Boyer* (1911), 74 Misc. 329.

JURORS.

Erie County.

L. 1895, ch. 369, § 20 (B. C. & G. Consol. Vol. 8, p. 511) amended by L. 1912, ch. 147, in effect Apr. 4, 1912, as follows:

§ 20. The qualifications of jurors, in the counties embraced within this act shall be as follows:

1. A male citizen of the United States and a resident of that county.
2. Not less than twenty-one, nor more than seventy years of age.
3. The owner in his own right of real property of the value of one hundred and fifty dollars, or of personal property of the value of two hundred and fifty dollars, or the husband of a woman who is the owner in her own right of real or personal property of that value respectively.
4. In the possession of his natural faculties, and not infirm or decrepit.
5. Free from all legal exceptions; intelligent; of sound mind and good character; of approved integrity; of sound judgment; and able to read and write the English language understandingly.

The exemptions from jury duty within the counties embraced in this act shall be such as are prescribed by the general laws of the state, and in addition thereto the following persons shall be exempt: Editors and editorial writers, or reporters of daily newspapers, regularly employed as such and not following any other vocation and surgeon dentists regularly engaged in the practice of their profession. The commissioner alone shall decide upon their qualifications and exemptions, except as otherwise expressly prescribed in this act. But the court shall have the power to review and decide upon their qualifications and exemptions upon a written application and satisfactory legal proof at any time after they are notified and attend. The commissioner, upon request, shall issue to a person entitled to an exemption a certificate of that fact, which shall exempt the person to whom it is granted from jury duty during the time specified therein. He shall keep a record of all proceedings before him or in his office, and

| § 1. | Acts legalized. | L. 1912, ch. 71. |
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of all persons exempted and the time of their exemptions. He may require any person, who is summoned by him for examination as to his qualifications, to serve as a jurymen. He shall be entitled to and must collect from the person applying therefor, for the benefit of the county, for each copy of a paper furnished by him, the same fees as the clerk of a court of record. (*Amended by L. 1901, ch. 230, L. 1911, ch. 690, and L. 1912, ch. 147, in effect Apr. 4, 1912.*)

JUSTICES OF PEACE.

L. 1912, ch. 71.—An act to legalize the official acts of certain justices of the peace and authorizing them to execute and file the official oaths and certificate. (*In effect Mch. 26, 1912.*)

Section 1. The official acts of every justice of the peace duly elected or appointed to office, heretofore done and performed, as far as such official acts may be affected, impaired or questioned by reason of the failure of any such justice of the peace to take, subscribe and file the official oaths or give an official bond or undertaking as required by law, or within the time prescribed by law or of the failure to file the certificate prescribed by the town law, are hereby legalized, ratified and confirmed, and any justice of the peace heretofore elected or appointed to the office who has neglected to file an official bond or undertaking, or to take the oath of office, or to file the certificate prescribed by said town law, within the time prescribed by law, may take such oath, file such bond or undertaking, or such certificate within sixty days from and after the passage of this act and the same shall have the same force, effect and validity as if the same had been done within the time prescribed by law. Nothing herein contained shall affect any action or proceeding pending when this act shall take effect, or any action or proceeding begun within ten days of the taking of such oath, filing of such bond or undertaking or filing of such certificate prescribed by said town law.

LABOR LAW.

(L. 1908, ch. 36.)

§ 2. Definitions.

A tugboat is neither a factory nor a "mill, workshop or other manufacturing or business establishment" within the meaning of this section, even when liberally construed for the purpose of protecting workmen and minors. *Shannahan v. Empire Engineering Corp.* (1912), 204 N. Y. 543.

§ 3. Hours to constitute a day's work.

Application.—The provisions of the Labor Law, providing that eight hours shall constitute a legal day's work does not apply to janitors in the public schools of the city of Syracuse. Neither does it apply to janitors in common schools operating under the general Education Law of the state. Rept. of Atty. Genl., Mch. 8, 1912.

A fireman at a state prison may be legally appointed to perform duty for more than eight hours a day, as the provisions of the Labor Law do not restrict the hours of labor of an employee in a state institution. Rept. of Atty. Genl. (1911), Vol. 2, p. 612.

The Commissioner of Labor is not empowered by the Labor Law to issue an order permitting a contractor engaged on work under contract with a municipality to work his men more than eight hours a day, even though, in the opinion of the commissioner, an extraordinary emergency exists. Rept. of Atty. Genl. (1911), Vol. 2, p. 552.

The word "locality" means the immediate political subdivision where the public work under construction in its final or completed form is to be situated, erected or used. Rept. of Atty. Genl., Feb. 27, 1912.

The term "prevailing rate of wages" means the prevailing, current, general or common rate paid for a legal day's work in the locality in the same trade or occupation. Rept. of Atty. Genl., Feb. 27, 1912.

§ 8. Regulation of hours of certain employees on railroads.

Engineers and conductors, who are occasionally called upon to take orders over a telephone as to the movement of their trains when stuck on a siding, are not "operators" within the meaning of this section so that the "eight hour" clause applies to them. Rept. of Atty. Genl., Mch. 26, 1912.

§ 9. Payment of wages by receivers.

Who is not a workingman or laborer.—Under a construction of the State Court of Appeals, an attorney at law, employed, though not in his professional capacity, by an electric company to procure options on property and water power sites, at a compensation of \$10 per day and expenses, when employed, is not a workingman or laborer, and hence not entitled to preference. *Gay v. Hudson River Electric Power Co.*, 178 Fed. 499 (1910).

§ 14. Preference in employment of persons upon public works.

Effect upon rights of subjects under treaties with other countries.—This section is not in contravention of the rights of subjects of other sovereignties under treaties guaranteeing to them the most constant protection and security for their persons and property and the enjoyment in that respect of the same rights and privileges as are or shall be granted to natives and also granting to such foreign subjects liberty to carry on trade and generally to do anything incident or necessary

§§ 18, 20, 43.

Scaffolding.

L. 1912, ch. 382.

to, trade, upon the same terms as native citizens or subjects. *People v. Ludington's Sons, Inc.* (1911), 74 Misc. 363, 131 N. Y. Supp. 550.

§ 18. Scaffolding for use of employees.

Application of section.—The provisions of this section impose upon the employer the risk of defects in scaffolding, etc., furnished or erected for the performance of labor, without regard to negligence. *Smith v. Variety Iron & Steel Co.* (1911), 72 Misc. 537, 130 N. Y. Supp. 277.

A master who, contrary to this section, furnished his employee with a scaffold which broke, although not subjected to any unusual strain, and which failed to carry the weight for which it was intended, cannot escape liability for the injuries received by the servant because the defect was not discoverable by any reasonable inspection. *Smith v. Variety Iron & Steel Works Co.* (1911), 147 App. Div. 242, 131 N. Y. Supp. 1033.

An employee of a sub-contractor suing the general contractor to recover for personal injuries received because of his failure to erect a safe scaffold, need not prove that the contract between the defendant and the sub-contractor required the former to erect the scaffolding. It is sufficient that it appear that the scaffolding was actually erected by the defendant, and was used with his knowledge by the employees of the sub-contractor. *Quigley v. Thatcher* (1911), 144 App. Div. 710, 129 N. Y. Supp. 170.

Evidence as to the tipping of a plank claimed to be part of a scaffold insufficiently constructed, held insufficient. *Eldridge v. Terry & Trench Co.* (1911), 145 App. Div. 560, 129 N. Y. Supp. 865.

Scaffold.—A structure, built to enable workmen to remove false work from the ceiling above the bins of a grain elevator, which defendant was building, which structure consisted of stringers laid upon angle irons which stood 3 feet above the floor on each side of an open bin about 20 feet apart, and loose planks were laid across these stringers, the stringers being made under the direction of defendant's assistant superintendent out of 2x6 material which had been previously used, varying from 5 to 9 feet in length and laid together, overlapping each other, and fastened with nails that did not go through more than two planks, is a scaffold within the meaning of this section. The law makes the defendant answerable absolutely for the safety of such a scaffold. *MacDonald Engineering Co. v. Manns*, 177 Fed. 203 (1910).

Guard rails upon scaffolds.—Prior to the amendment of 1911 a guard rail was not required to be placed upon a scaffold built upon the floor of a building. *Murphy v. American Ice Co.* (1912), 148 App. Div. 867.

§ 20. Protection of persons employed on buildings in cities.

Failure to guard shaft, assumption of risk.—Although a contractor engaged in erecting a building failed to comply with this section by guarding a shaft used for elevating building materials, one employed in the building and knowing that the shaft was unprotected assumed the risk. There can be no recovery for his death where, while passing within one foot and a half of the opening in the course of his duties, he stumbled over sleepers intended to support the flooring and fell into the opening. *Rooney v. Brogan Construction Co.* (1911), 147 App. Div. 68, 131 N. Y. Supp. 720.

§ 43. Powers of commissioner.—*Subdivision 1, amended by L. 1912, ch. 382, in effect Apr. 15, 1912, as follows:*

1. The commissioner of labor, his deputies and their assistants and each special agent, confidential agents, factory inspector, mine inspector,

L. 1912, chs. 158, 335. Factories; inspectors; registration. §§ 61, 69, 70, 71.

tunnel inspector, chief investigator, special investigators, mercantile inspector, or deputy mercantile inspectors may administer oaths and take affidavits in matters relating to the provisions of this chapter and may also serve process in criminal actions arising thereunder.

§ 61. **Factory inspectors.**—The commissioner of labor may appoint from time to time not more than one hundred and twenty-five persons as factory inspectors, not more than twenty of whom shall be women, and who may be removed by him at any time. The factory inspectors may be divided into five grades, but not more than thirty shall be of the third grade, and not more than eight shall be of the fourth grade and not more than one shall be of the fifth grade. Each inspector of the first grade shall receive an annual salary of one thousand dollars, each of the second grade an annual salary of one thousand two hundred dollars and each of the third grade an annual salary of one thousand five hundred dollars. There shall be after October first, nineteen hundred and eleven, no further appointments in the first grade and no vacancies in the first grade shall be filled. There may be at any time not to exceed ninety persons in the second grade. Each inspector of the fourth grade shall receive an annual salary of two thousand five hundred dollars. Each inspector of the fifth grade shall receive an annual salary of three thousand five hundred dollars. Each inspector of the fifth grade shall be a mechanical engineer. (*Amended by L. 1911, ch. 729 and L. 1912, ch. 158, in effect Apr. 5, 1912.*)

§ 69. **Registration of factories.**—The owner of every factory shall register such factory with the state department of labor, giving the name of the owner, his home address, the address of the business, the name under which it is carried on, the number of employees and such other data as the commissioner of labor may require. Such registration of existing factories shall be made within six months after this section takes effect. Factories hereafter established shall be so registered within thirty days after the commencement of business. Within thirty days after a change in the location of a factory the owner thereof shall file with the commissioner of labor the new address of the business, together with such other information as the commissioner of labor may require. (*Added by L. 1912, ch. 335, in effect Apr. 15, 1912.*)

§ 70. **Employment of minors.**

Application.—The provision of this section requiring that no child between the ages of fourteen and sixteen years shall be employed in a factory unless an employment certificate is filed as therein provided, has no application where a boy between fifteen and sixteen years of age was injured by being caught by unguarded set-screws on a tug boat on which he was employed, and the trial court properly excluded evidence offered to show that no such certificate had been issued. *Shannahan v. Empire Engineering Corp.* (1912), 204 N. Y. 543.

§ 71. **Employment certificates, how issued.**—*Subdivision (e) and final paragraph, amended by L. 1912, ch. 333, in effect Apr. 15, 1912, as follows:*

(e) Physicians' certificates. In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his inability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than ninety days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age such officer shall accept such certificates as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child further has personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and legibly write simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. Every such employment certificate shall be signed, in the presence of the officer issuing the same, by the child in whose name it is issued. In every case, before an employment certificate is issued, such physical fitness shall be determined by a medical officer of the department

L. 1912, chs. 77, 539.

Hours of labor in factories.

§§ 75, 77.

or board of health, who shall make a thorough physical examination of the child and record the result thereof on a blank to be furnished for the purpose by the state commissioner of labor and shall set forth thereon such facts concerning the physical condition and history of the child as the commissioner of labor may require. (*Amended by L. 1912, ch. 333, in effect Apr. 15, 1912.*)

Effect of failure to secure labor certificate upon the liability of an insurance company for injuries to those employed in violation of law, see *Mason-Henry Press v. Aetna Life Ins. Co.* (1911), 146 App. Div. 181, 130 N. Y. Supp. 961.

§ 75. Report of certificates issued.—The board or department of health or health commissioner of a city, village or town, shall transmit, between the first and tenth day of each month, to the office of the commissioner of labor a list of the names of the children to whom certificates have been issued, together with a duplicate of the record of the physical examination of all such children made as hereinbefore provided. (*Amended by L. 1912, ch. 333, in effect Apr. 15, 1912.*)

§ 77. Hours of labor of children, minors and women.—1. No child under the age of sixteen years shall be employed or permitted to work in or in connection with any factory in this state before eight o'clock in the morning, or after five o'clock in the evening of any day, or for more than eight hours in any one day, or more than six days in any one week.

2. No male minor under the age of eighteen years shall be employed or permitted to work in any factory in this state more than six days or fifty-four hours in any one week, or for more than nine hours in any one day, except as hereinafter provided; nor between the hours of twelve midnight and four o'clock in the morning.

3. No female minor under the age of twenty-one years and no woman shall be employed or permitted to work in any factory in this state before six o'clock in the morning, or after nine o'clock in the evening of any day, or more than six days or fifty-four hours in any one week; nor for more than nine hours in any one day except as hereinafter provided.

4. A printed notice, in a form which shall be furnished by the commissioner of labor, stating the number of hours per day for each day of the week required of such persons, and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not otherwise be employed, permitted or suffered to work in such factory except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the commissioner of labor. The presence of such persons in the factory at any other hours than those stated in the printed notice, or if no such notice be posted, before seven o'clock in the morning or after six o'clock in the evening, shall constitute prima facie evidence of a violation of this section.

§§ 78, 80.

Hours of labor in factories.

L. 1912, ch. 539.

5. In a factory wherein, owing to the nature of the work, it is practically impossible to fix the hours of labor weekly in advance the commissioner of labor, upon a proper application stating facts showing the necessity therefor, shall grant a permit dispensing with the notice hereinbefore required, upon condition that the daily hours of labor be posted for the information of employees and that a time book in a form to be approved by him, giving the names and addresses of all female employees and the hours worked by each of them in each day, shall be properly and correctly kept, and shall be exhibited to him or any of his subordinates promptly upon demand. Such permit shall be kept posted in such place in such factory as such commissioner may prescribe, and may be revoked by such commissioner at any time for failure to post it or the daily hours of labor or to keep or exhibit such time book as herein provided.

6. Where a female or male minor is employed in two or more factories or mercantile establishments in the same day or week the total time of employment must not exceed that allowed per day or week in a single factory or mercantile establishment; and any person who shall require or permit a female to work in a factory between the hours of six o'clock in the evening and seven o'clock in the morning in violation of the provisions of this subdivision of this section, with or without knowledge of the previous or other employment, shall be liable for a violation thereof. (*Amended by L. 1912, ch. 539, in effect Oct. 1, 1912.*)

§ 78. **Exceptions.**—1. A female sixteen years of age or upwards and a male between the ages of sixteen and eighteen may be employed in a factory more than nine hours a day: (a) regularly in not to exceed five days a week, in order to make a short day or holiday on one of the six working days of the week; (b) irregularly in not to exceed three days a week; provided that no such person shall be required or permitted to work more than ten hours in any one day or more than fifty-four hours in any one week, and that the provisions of the preceding section as to notice or time book be fully complied with.

2. The provisions of subdivisions two and three of section seventy-seven relating to maximum hours shall not apply to the employment of women and minors sixteen years of age and upwards in canning or preserving perishable products in fruit and canning establishments between the fifteenth day of June and the fifteenth day of October each year.

3. In a prosecution for a violation of any provision of this or of the preceding section the burden of proving a permit or exception shall be upon the party claiming it. (*Amended by L. 1912, ch. 539, in effect Oct. 1, 1912.*)

§ 80. **Stairs and doors.**

Owners of a factory are liable for a violation of the provisions of this section, which forbid the locking, bolting or fastening of any doors leading in or to any factory during working hours. *People v. Harris* (1911), 74 Misc. 353.

Indictment for violation of this section in locking doors, see *People v. Harris* (1911), 74 Misc. 353.

§ 81. Protection of employees operating machinery.

Duty to guard machinery, etc.—Where it is practicable to guard a machine, and danger from its remaining unguarded should be reasonably anticipated, the provisions of the statute which require that all vats, pans, saws, planers, cogs, gearing, belting, shafting, set-screws and machinery of every description shall be properly guarded are mandatory. A machine that is maintained wholly without guards is presumptively contrary to the statute. The burden of showing that it is impracticable to guard a machine, or that its location removes it from danger to employees, is upon the person or corporation maintaining it. *Scott v. International Paper Co.* (1912), 204 N. Y. 49.

A master is not required to guard machinery in such a way that an accident cannot possibly happen. It is only against such accidents that might reasonably be expected to occur that he is bound to guard even the machinery enumerated in the statute. Notwithstanding this section requires certain machinery to be properly guarded, such machinery may be so located that, as a matter of law, no guard is required. In other cases the necessity for guarding and the sufficiency of a guard are questions of fact for the jury, and, if their verdict is against the weight of evidence, it should be set aside. *Campbell v. Kertscher & Co.* (1911), 146 App. Div. 384, 132 N. Y. Supp. 178.

The provisions of this section, requiring a master to guard machinery, does not call upon him to guard against every possible danger, but only against those which would occur to a reasonably prudent man as liable to happen. Thus, where the moving parts of a printing press were entirely contained within a heavy iron frame, it is sufficiently guarded within the meaning of the statute, although there were openings in the frame so that the plaintiff, who fell upon a slippery floor, thrust his hand into the opening and was injured. *Kimmerle v. Carey Printing Co.* (1911), 144 App. Div. 714, 129 N. Y. Supp. 572.

Where in an action under the Employers' Liability Act to recover for injuries caused by an unguarded set-pin it appears that plaintiff was obliged in the course of his duties to climb upon a centrifugal pump several times a day while it was in motion to oil it, and that on the day of the accident as he was descending from the pump he came in contact with the set-pin which formed part of the piston-rod and was injured, and it further appears that the light was not good and the pin could not be seen, it is error to dismiss his complaint, as matter of law. It is for the jury to say whether the set-pin was properly guarded as required by this section and whether defendant had used reasonable care to make the place in which plaintiff worked reasonably safe. *Connor v. Acme Engineering & Contracting Co.* (1912), 148 App. Div. 518.

A servant employed solely to nail cleats upon boards after they were delivered in the yard of his master's mill by a mechanical conveyor running upon rollers and operated by cogs, and whose duties had no relation whatever to the conveyor, and who was injured by slipping and falling against the cogs of the conveyor, which were unguarded, has no standing under the provisions of the Labor Law, except as the fact that the cogwheels were unguarded may bear upon the question of a reasonably safe place in which to work. *Manser v. Astoria Veneer Mills* (1911), 146 App. Div. 478, 131 N. Y. Supp. 729.

Failure to guard belt; volunteer.—Where an employee of a paper mill had occasion to enter a pit in the floor of the mill for the purpose of examining the mill machinery, and the floor of the pit was covered with two feet of water, and extending across the pit were two steam pipes and an unguarded belt, one of the steam

pipes being located about a foot from the bottom of the pit and the other about two feet from the bottom of the pit, and the belt being located about five feet six inches above the lower pipe, it cannot be said, as matter of law, that the employee was negligent in trying to keep off the pit floor by standing upon the lower steam pipe with the result that his head came in contact with the unguarded belt, or that the employer was not negligent in failing to guard the belt, pursuant to this section. Evidence examined, and held, not to establish, as matter of law, that the employee who went into the pit was a mere volunteer having no business there. *Hubbell v. Pioneer Paper Co.* (1911), 147 App. Div. 339, 131 N. Y. Supp. 932.

§ 83-a. Fire drills.—In every factory in which more than twenty-five persons are regularly employed above the ground or first floor a fire drill of the occupants of such building shall be conducted at least once in every three months under the supervision of the local fire department or one of its officers. Appropriate rules and regulations to make effective this provision shall be prepared for the city of New York by the fire commissioner of such city, and for other parts of the state, by the state fire marshal. Such rules and regulations shall be posted on each floor of every factory to which they apply. In the city of New York the fire commissioner of such city, and elsewhere, the state fire marshal is charged with the duty of enforcing this section. (*Added by L. 1912, ch. 330, in effect Apr. 16, 1912.*)

§ 83-b. Automatic sprinklers.—In every factory building over seven stories or over ninety feet in height in which wooden flooring or wooden trim is used and more than two hundred people are regularly employed above the seventh floor or more than ninety feet above the ground level of such building, the owner of the building shall install an automatic sprinkler system approved as to form and manner in the city of New York by the fire commissioner of such city, and elsewhere, by the state fire marshal. Such installation shall be made within one year after this section takes effect, but the fire commissioner of the city of New York in such city and the state fire marshal elsewhere may, for good cause shown, extend such time for an additional year. A failure to comply with this section shall be a misdemeanor as provided by section twelve hundred and seventy-five of the penal law and the provisions hereof shall also be enforced in the city of New York by the fire commissioner of such city in the manner provided by the title three of chapter fifteen of the Greater New York charter, and elsewhere by the state fire marshal in the manner provided by article ten-a of the insurance law. (*Added by L. 1912, ch. 332, in effect Apr. 16, 1912.*)

§ 83-c. Fire proof receptacles; gas jets; smoking.—1. Every factory shall be provided with properly covered fire proof receptacles, the number, style and location of which shall be approved in the city of New York by the fire commissioner, and elsewhere, by the commissioner of labor. There shall be deposited in such receptacles all inflammable waste materials, cuttings and rubbish. No waste materials, cuttings and rubbish shall be permitted

to accumulate on the floors of any factory but shall be removed therefrom not less than twice each day. All such waste materials, cuttings and rubbish shall be entirely removed from a factory building at least once in each day.

2. All gas jets or lights in factories shall be properly enclosed by globes, wire cages or otherwise properly protected in a manner approved in the city of New York by the fire commissioner of such city, and elsewhere, by the commissioner of labor.

3. Smoking in a factory is prohibited. A notice of such prohibition stating the penalty for violation thereof shall be posted on every floor of such factory in English and also in such other language or languages as the fire commissioner of the city of New York in such city, and elsewhere, the state fire marshal, shall direct. The fire commissioner of the city of New York in such city, and elsewhere, the state fire marshal shall enforce the provisions of this subdivision. (*Added by L. 1912, ch. 329, in effect Apr. 16, 1912.*)

§ 88. **Drinking water, wash-room and water-closets.**—In every factory there shall be provided at all times for the use of employees, a sufficient supply of clean and pure drinking water. Such water shall be supplied through proper pipe connections with water mains through which is conveyed the water used for domestic purposes, or, from a spring or well or body of pure water; if such drinking water be placed in receptacles in the factory, such receptacles shall be properly covered to prevent contamination and shall be thoroughly cleaned at frequent intervals. In every factory there shall be provided and maintained for the use of employees, suitable and convenient wash-rooms, adequately equipped with sinks and proper water service; and in all factories where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases are present as an incident or result of the business or processes conducted by such factory there shall be provided washing facilities which shall include hot water and individual towels. Where females are employed, dressing or emergency rooms shall be provided for their use; each such room shall have at least one window opening to the outer air and shall be enclosed by means of solid partitions or walls. In brass and iron foundries suitable provision shall be made and maintained for drying the working clothes of persons employed therein. In every factory there shall be provided suitable and convenient water-closets for each sex, in such number as the commissioner of labor may determine. Such water-closets shall be properly screened, lighted, ventilated and kept clean and sanitary; the enclosure of each closet shall be kept clean and sanitary and free from all obscene writing or marking. The water-closets used by females shall be entirely separated from those used by males and the entrances thereto shall be effectively screened. The water-closets shall be maintained inside the factory whenever practicable and in all cases, when required by the commissioner of

§§ 89-a, 93-a, 95, 134-a. Unclean factories; tunnels. L. 1912, chs. 331, 334, 336.

labor. (*Amended by L. 1910, ch. 229, and L. 1912, ch. 336, in effect Oct. 1, 1912.*)

§ 89-a. **Prohibition against eating meals in certain workrooms.**—No employee shall take or be permitted to take any food into a room or apartment in a factory, mercantile establishment, mill or workshop, commercial institution or other establishment or working place where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases exist in harmful conditions or are present in harmful quantities as an incident or result of the business conducted by such factory, commercial establishment, mill or workshop, commercial institution or other establishment or working place; and notice to the foregoing effect shall be posted in each such room, or apartment. No employee, unless his presence is necessary for the proper conduct of the business, shall remain in any such room, apartment or enclosure during the time allowed for meals, and suitable provision shall be made and maintained by the employer for enabling employees to take their meals elsewhere in such establishment. (*Added by L. 1912, ch. 336, in effect Oct. 1, 1912.*)

§ 93-a. **Employment of females after childbirth prohibited.**—It shall be unlawful for the owner, proprietor, manager, foreman or other person in authority of any factory, mercantile establishment, mill or workshop to knowingly employ a female or permit a female to be employed therein within four weeks after she has given birth to a child. (*Added by L. 1912, ch. 331, in effect Apr. 16, 1912.*)

§ 94. **Tenant-factories.**

Application of section.—*People v. Harris* (1911), 74 Misc. 353, N. Y. Supp.

§ 95. **Unclean factories.**—If the commissioner of labor finds evidence of contagious disease in any factory he shall affix to any articles therein exposed to such contagion a label containing the word "unclean" and shall notify the local board of health, who may disinfect such articles and thereupon remove such label. If the commissioner of labor finds that any work-room or factory is foul, unclean, or unsanitary, he may, after first making and filing in the public records of his office a written order stating the reasons therefor, affix to any articles therein found a label containing the word "unclean." No one but the commissioner of labor shall remove any label so affixed; and he may refuse to remove it until such articles shall have been removed from such factory and cleaned, or until such room or rooms shall have been cleaned or made sanitary. (*Amended by L. 1912, ch. 334, in effect Apr. 16, 1912.*)

§ 134-a. **Hours of labor.**—All work in the prosecution of which tunnels, caissons or other apparatus or means in which compressed air is employed or used shall be conducted subject to the following restrictions and regulations: When the air pressure in any compartment, caisson, tunnel or place in

which men are employed is greater than normal and does not exceed twenty-eight pounds to the square inch, no employee shall be permitted to work or remain therein more than eight hours in any twenty-four hours and shall only be permitted to work under such air pressure provided he shall during such period return to the open air for an interval of at least thirty consecutive minutes, which interval his employer shall provide for. When the air pressure in any such compartment, caisson, tunnel or place shall exceed twenty-eight pounds to the square inch, and shall not equal thirty-six pounds to the square inch, no employee shall be permitted to work or remain therein more than six hours, such six hours to be divided into two periods of three hours each, with an interval of at least one hour between each such period. When the air pressure in any such compartment, caisson, tunnel or place shall equal thirty-six pounds to the square inch and shall not equal forty-two pounds to the square inch, no such employees shall be permitted to work or remain therein more than four hours in any twenty-four hours, such four hours to be divided into periods of not more than two hours each, with an interval of at least two hours between each such period; when the air pressure in any such compartment, caisson, tunnel or place shall equal forty-two pounds to the square inch and shall not equal forty-six pounds to the square inch, no employee shall be permitted to work or remain therein more than three hours in any twenty-four hours, such three hours to be divided into periods of not more than ninety minutes each, with an interval of at least three hours between each such period; when the air pressure in any such compartment, caisson, tunnel or place shall equal forty-six pounds to the square inch and shall not equal fifty pounds to the square inch, no employee shall be permitted to work or remain therein more than two hours in any twenty-four hours, such two hours to be divided into periods of one hour each, with an interval of not less than four hours between each such period; no employee shall be permitted to work in any compartment, caisson, tunnel or place where the pressure shall exceed fifty pounds to the square inch, except in case of emergency. No person employed in work in compressed air shall be permitted by his employer or by the person in charge of said work to pass from the place in which the work is being done to atmosphere of normal pressure, without passing through an intermediate lock or stage of decompression, which said decompression shall be, where the work is being done in tunnels, at the rate of three pounds every two minutes unless the pressure shall be over thirty-six pounds, in which event the decompression shall be at the rate of one pound per minute; and which said decompression shall be, where the work is being done in caissons, at the following rates:

Where pressure is not over ten pounds per square inch the time of decompression shall be one minute; when pressure is over ten pounds per square inch, but does not exceed fifteen pounds per square inch, the time of decompression shall be two minutes; when pressure is over fifteen pounds per square inch, but does not exceed twenty pounds per square inch, the

time of decompression shall be five minutes; when pressure is over twenty pounds per square inch, but does not exceed twenty-five pounds per square inch, the time of decompression shall be ten minutes; when pressure is over twenty-five pounds per square inch but * but does not exceed thirty pounds per square inch, the time of decompression shall be twelve minutes; when pressure is over thirty pounds per square inch, but does not exceed thirty-six pounds per square inch, the time of decompression shall be fifteen minutes; when pressure is over thirty-six pounds per square inch, but does not exceed forty pounds per square inch, the time of decompression shall be twenty minutes; when pressure is over forty pounds per square inch, but does not exceed fifty pounds per square inch, the time of decompression shall be twenty-five minutes.

All necessary instruments shall be attached to all caissons and air locks showing the actual air pressure to which men employed therein are subjected and which instruments shall be accessible to and in charge of a competent person who shall not be employed more than eight hours in any twenty-four hours. (*Added by L. 1909, ch. 291, and amended by L. 1912, ch. 219, in effect Sept. 1, 1912.*)

§ 134-b. **Medical attendance and regulations.**—Any person or corporation carrying on any tunnel, caisson or other work in the prosecution of which men are employed or permitted to work in compressed air, shall, while such men are so employed, also employ and keep in employment, one or more duly qualified persons to act as medical officer or officers who shall be in attendance at all necessary times while such work is in progress and whose duty it shall be to administer and strictly enforce the following:

(a) No person shall be permitted to work in compressed air until after he shall have been examined by such medical officer and reported by such officer to the person in charge thereof as found to be qualified, physically, to engage in such work.

(b) In the event of absence from work, by an employee for ten or more successive days for any cause, he shall not resume work until he shall have been re-examined by the medical officer and his physical condition reported as hitherto provided to be such as to permit him to work in compressed air.

(c) No person known to be addicted to the excessive use of intoxicants shall be permitted to work in compressed air.

(d) No person not having previously worked in compressed air shall be permitted during the first twenty-four hours of his employment to work for longer than one-half of a day period as provided in section one hundred and thirty-four-a and after so working shall be re-examined and not permitted to work in a place where the pressure is in excess of fifteen pounds unless his physical condition be reported by the medical officer as heretofore provided to be such as to qualify him for such work.

* So in original.

L. 1912, chs. 219, 543.

Work in tunnels, etc.

§§ 134-d, e, 152, 153.

(e) After a person has been employed continuously in compressed air for a period of three months he shall be re-examined by the medical officer and he shall not be allowed, permitted or compelled to work until such examination has been made and he has been reported as heretofore provided as physically qualified to engage in compressed air work.

(f) The said medical officer shall at all times keep a complete and full record of examinations made by him, which record shall contain dates on which examinations were made and a clear and full description of the person examined, his age and physical condition at the time examined, also the statement as to the time such person has been engaged in like employment.

(g) Properly heated, lighted and ventilated dressing rooms shall be provided for all employees in compressed air which shall contain lockers and benches and shall be open and accessible to the men during the intermission between shifts. Such rooms shall be provided with baths, with hot and cold water service and a proper and sanitary toilet.

(h) A medical lock shall be established and maintained in connection with all work in compressed air as herein provided. Such lock shall be kept properly heated, lighted and ventilated and shall contain proper medical and surgical equipment. Such lock shall be in charge of a certified trained nurse selected by the medical officer, who shall be qualified to render temporary relief. (*Added by L. 1909, ch. 291, and amended by L. 1912, ch. 219, in effect Sept. 1, 1912.*)

§ 134-d. All work in the prosecution of which tunnels, caissons or other apparatus or means within which compressed air is employed shall have at least two air pipes or lines connected at all times and in perfect working condition. (*Added by L. 1912, ch. 219, in effect Sept. 1, 1912.*)

§ 134-e. Wherever electricity is used as lighting apparatus the light supplied for the shaft leading to the caisson or tunnel or other apparatus wherein the men are actually at work shall be supplied from a different wire from the lights which are located at the point wherein the men are actually working under air. (*Added by L. 1912, ch. 219, in effect Sept. 1, 1912.*)

§ 152. **Special investigators.**—The commissioner of labor may appoint from time to time such number of special investigators and such other assistants as may be necessary to carry into effect the powers of the said bureau herein defined, who may be removed by him at any time. The special investigators may be divided into two grades. Each special investigator of the first grade shall receive an annual salary of fifteen hundred dollars, and each of the second grade an annual salary of twelve hundred dollars. (*Added by L. 1910, ch. 514, and amended by L. 1912, ch. 543, in effect Apr. 19, 1912.*)

§ 153. **General powers and duties.**—1. The commissioner of labor shall

have the power to make full inquiry, examination and investigation into the condition, welfare and industrial opportunities of all aliens arriving and being within the state. He shall also have power to collect information with respect to the need and demand for labor by the several agricultural, industrial and other productive activities, including public works throughout the state; to gather information with respect to the supply of labor afforded by such aliens as shall from time to time arrive or be within the state; to ascertain the occupations for which such aliens shall be best adapted, and to bring about intercommunication between them and the several activities requiring labor which will best promote their respective needs; to investigate and determine the genuineness of any application for labor that may be received and the treatment accorded to those for whom employment shall be secured; to co-operate with the employment and immigration bureaus conducted under authority of the federal government, or by the government of any other state, and with public and philanthropic agencies designed to aid in the distribution and employment of labor; and to devise and carry out such other suitable methods as will tend to prevent or relieve congestion and obviate unemployment.

2. The commissioner of labor shall procure with the consent of the federal authorities complete lists giving the names, ages, and destination within the state of all alien children of school age, and such other facts as will tend to identify them and shall forthwith deliver copies of such lists to the commissioner of education or the several boards of education and school boards in the respective localities within the state to which said children shall be destined, to aid in the enforcement of the provisions of the education law relative to the compulsory attendance at school of children of school age.

3. The commissioner of labor shall further co-operate with the commissioner of education and with the several boards of education and school commissioners in the state to ascertain the necessity for and the extent to which instruction should be imparted to aliens within the state; to devise methods for the proper instruction of adult and minor aliens in the English language and other subjects, and in respect to the duties and rights of citizenship and the fundamental principles of the American system of government; and may establish and supervise classes and otherwise further their education.

4. The commissioner of labor may enter and inspect all labor camps within the state, and any camp which he may have reasonable cause to believe is a labor camp; and shall inspect all employment and contract labor agencies dealing with aliens, or whenever he may have reasonable cause to believe that such employment or contract labor agencies deal with aliens; or who secure or negotiate contracts for their employment within the state; shall inspect all immigrant lodging places or all places where he has reasonable cause to believe that aliens are received, lodged, boarded or harbored; shall co-operate with other public authorities, to enforce all laws

applicable to private bankers dealing with aliens and laborers; secure information with respect to such aliens who shall be in prisons, almshouses and insane asylums of the state, and who shall be deportable under the laws of the United States, and co-operate with the federal authorities and with such officials of the state having jurisdiction over such criminals, paupers and insane aliens who shall be confined as aforesaid, so as to facilitate the deportation of such persons as shall come within the provisions of the aforesaid laws of the United States, relating to deportation; shall investigate and inspect institutions established for the temporary shelter and care of aliens, and such philanthropic societies as shall be organized for the purpose of securing employment for or aiding in the distribution of aliens, and the methods by which they are conducted.

5. The commissioner of labor shall investigate conditions prevailing at the various places where aliens are landed within this state, and at the several docks, ferries, railway stations and on trains and boats therein, and in co-operation with the proper authorities, afford them protection against frauds, crimes and exploitation; shall investigate any and all complaints with respect to frauds, extortion, incompetency and improper practices by notaries public, interpreters and other public officials, or by any other person or by any corporation, whether public or private, and present to the proper authorities the results of such investigation for action thereon; shall investigate and study the general social conditions of aliens within this state, for the purpose of inducing remedial action by the various agencies of the state possessing the requisite jurisdiction; and shall generally, in conjunction with existing public and private agencies, consider and devise means to promote the welfare of the state. (*Added by L. 1910, ch. 514, and amended by L. 1912, ch. 543, in effect Apr. 19, 1912.*)

§ 154. **Proceedings before the commissioner of labor.**—Any investigation, inquiry or hearing which the commissioner of labor has power to undertake or to hold may by special authorization from the commissioner of labor, be undertaken or held by or before the chief investigator, or any official whom he may designate, and any decision rendered on such investigation, inquiry or hearing, when approved, and confirmed by the commissioner and ordered filed in his office, shall be and be deemed to be the order of the commissioner. All hearings before the commissioner or chief investigator or official duly designated therefor shall be governed by rules to be adopted and prescribed by the commissioner. The commissioner or chief investigator or official duly designated therefor shall not be bound by technical rules of evidence and shall have the power to subpoena any witness or any person, and to examine all books, contracts, records and documents of any person or corporation and by subpoena duces tecum to compel production thereof, and to effect as far as practicable an amicable settlement or adjustment of any such complaint. Such subpoena shall be issued by the commissioner or chief investigator under the seal of the department of labor.

No person shall be excused from testifying or from producing any books or papers on any investigation or inquiry by or upon any hearing before the commissioner or chief investigator, or official duly designated thereof when ordered to do so, upon the ground that the testimony or evidence, books or documents required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture, for or on account of any act, transaction, matter or thing, concerning which he shall under oath have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. (*Added by L. 1910, ch. 514, and amended by L. 1912, ch. 543, in effect Apr. 19, 1912.*)

§ 156. The licensing and regulation of immigrant lodging places.

1. No person shall hereafter, directly or indirectly, own, conduct or keep an immigrant lodging place without having first obtained from the commissioner of labor a license therefor. Before receiving such license the applicant therefor shall file with the commissioner of labor, in such form as he may prescribe, a statement certified by such applicant, or if said applicant is a corporation, by one of its officers, designating the location of the immigrant lodging place for which a license shall be requested, and specifying the number of boarders or lodgers received by said applicant at any one time during the year preceding such application at the place for which a license is sought, or if no business shall have previously been conducted at said place the maximum number of boarders or lodgers which it will accommodate. With such application there shall be presented to the commissioner of labor proof of the good moral character of the applicant, and in case such applicant is a corporation, of its officers, and in addition thereto a bond to the people of the state of New York, with two or more sureties or of a surety company approved by the commissioner of labor, conditioned that the obligor shall obey all laws, rules and regulations applicable to such immigrant lodging place prescribed by any lawful authority, and that such obligor shall discharge all obligations and pay all damages, loss and injuries which shall accrue to any person or persons dealing with such licensee, by reason of any contract or other obligation of such licensee, or resulting from any fraud or deceit, conversion of property, oppression, excessive charges, or other wrongful act of said licensee or of his servants or agents in connection with the business so licensed. Where the number of boarders or lodgers specified in said application shall not exceed ten persons the penalty of said bond shall be one hundred dollars where it shall be more than ten and less than fifty persons it shall be two hundred and fifty dollars, and where the number shall be more than fifty it shall be five hundred dollars. Any person aggrieved may bring an action for the enforcement of such bond in any court of competent jurisdiction. On the approval of the application for said license and of the

bond filed therewith the commissioner of labor shall issue a license authorizing the applicant to own, conduct and manage an immigrant lodging place at the place designated in the application and to be specified in the license certificate. For such license the applicant shall pay to the commissioner of labor a fee of five dollars where the number of boarders or lodgers stated in the application does not exceed ten, a fee of ten dollars where such number exceeds ten and does not exceed fifty, and a fee of twenty-five dollars where such number exceeds fifty. Such license shall not be transferable without the consent of the commissioner of labor, nor authorize the conduct of an immigrant lodging place on any other premises than those described in the application. Such license shall be renewable annually on the payment of a fee based on the maximum number of boarders and lodgers received by the licensee at the place licensed during the preceding year, as shown in a sworn statement filed by such applicant in such form as the commissioner of labor shall prescribe. The commissioner of labor shall keep a book or books in which the licenses granted and the bonds filed shall be entered in alphabetical order, together with a statement of the date of the issuance of the license, the name or names of the principals, the place where the business licensed is to be transacted, the names of the sureties upon the bond filed and the amount of the license fee paid by the licensee.

Note.—This subdivision was also amended by L. 1912, ch. 337, in effect Apr. 15, 1912, providing that the bond should be required "in the discretion of the commissioner." The amendment is omitted from the later amendment signed Apr. 19. Under ordinary rules of statutory interpretation it must be deemed superseded.

2. Every licensee shall keep conspicuously posted in the public rooms and in each bedroom of the place licensed a statement printed in the English language and in the language understood by the majority of the patrons of said place, specifying the rate of charges by the day and week for lodging, for meals supplied, for the transportation of passengers and baggage, the services of guides, and other service rendered to such patrons. No sum shall be charged or received by or for the licensee in excess of such posted rates for any service rendered, and payment shall not be enforceable for any charge in excess of such rates. A copy of the rates so posted shall be filed by the licensee with the commissioner of labor, and no increased rate shall be charged or received until a revised schedule showing such increase shall have been filed with the commissioner of labor. Every such licensee shall likewise file with the commissioner of labor a list specifying the names and addresses of every person employed by such licensee as a runner, guide or other employee, and showing whether such person is employed at a salary or on commission.

3. A license granted hereunder shall be revocable by the commissioner of labor on notice to the licensee and for cause shown.

4. The term immigrant lodging place as used in this section includes any place, boarding house, lodging house, inn or hotel where immigrants or emi-

§§ 156, 156-a, 200.

Employer's liability for injuries.

grants while in transit, or aliens are received, lodged, boarded or harbored, which shall not include any place maintained or conducted by a charitable, philanthropic or religious society, association or corporation. Nothing contained herein shall be held to apply to temporary sleeping quarters in labor or construction camps.

5. Any person or any officer of a corporation owning, conducting or managing an immigrant lodging place without having obtained from the commissioner of labor a license therefor, or who shall carry on such business after the revocation of a license to carry on such business, or who shall violate any of the provisions of this section, shall be guilty of a misdemeanor.

6. The license fees collected hereunder shall be paid to the comptroller and shall constitute a fund to be used in the joint discretion of the comptroller and commissioner of labor for the expenses necessary for carrying out the provisions of this section. (*Added by L. 1911, ch. 845 as § 156a, renumbered and amended by L. 1912, ch. 543, in effect Apr. 19, 1912.*)

§ 156. **Reports.** *Added by L. 1910, ch. 514, and renumbered 156a by L. 1912, ch. 543, § 3, in effect Apr. 19, 1912.*

§ 156-a. **The licensing and regulation of immigrant lodging places.**

Payment of license fees collected from immigrant lodging places should only be made after an appropriation definite in amount. Rept. of Atty. Genl., Jan. 3, 1912.

§ 200. **Employer's liability for injuries.**

Effect of amendment of 1910.—*Wesel v. Powers Co.* (1911), 147 App. Div. 167, 132 N. Y. Supp. 144.

Intention of the Employers' Liability Act (Laws of 1902, chap. 600) was to create a liability under certain circumstances where none existed at common law, but it did not attempt to define the whole measure of an employer's duty. *Wesel v. Powers Co.* (1911), 147 App. Div. 167, 132 N. Y. Supp. 144.

The federal courts will construe the statute, when an action under the New York Employer's Liability Act is brought in such court, in accordance with the construction placed thereon by the highest court of that state. *Proctor & Gamble Co. v. Williams*, 183 Fed. 695 (1910); *Pennsylvania Steel Co. v. Lakkonen*, 181 Fed. 325 (1910).

Case not removable to federal courts.—Where the allegations show a cause of action under this and the following sections, and the case was brought in a state court, it is not removable to the federal courts as one under the federal Employer's Liability Act, notwithstanding diversity of citizenship, and the fact that if it had stated a cause of action at common law or under the New York statute, it would have been removable. *Ullrich v. New York, N. H. & H. R. Co.*, 193 Fed. 768 (1912).

The master's duty to provide a safe place to work does not require him to follow up the details of the work and to see that the conditions brought about by the progress of the work are at all times such as to afford a reasonably safe environment. *Edgar v. Brooklyn H. R. R. Co.* (1911), 146 App. Div. 541, 131 N. Y. Supp. 286.

Where, in an action by a servant against his master to recover for personal injuries, it appears that the defendant's foreman in charge of the construction of a concrete building ordered the plaintiff, with knowledge that he had no experience in the work, to assist two other inexperienced men, one of whom directed him to knock out shoring supporting planks upon which concrete floors had been laid,

and that the plaintiff's fellow-servants standing upon ladders which were unsteady were unable to hold a plank after they had pried it loose, swerved it to the side, so that in falling it hit the plaintiff, he makes out a *prima facie* case, and a verdict in his favor is not against the weight of evidence where the defense offers no testimony. Under the circumstances the master might be found negligent in not furnishing a reasonably safe place for the plaintiff to work, notwithstanding that the building was in the process of construction and that the occupation was to some extent hazardous. *Chinn v. Ferro-Concrete Construction Co.* (1911), 148 App. Div. 368.

Where a servant sues under the Employers' Liability Act to recover for injuries received when a "tripper" car used in connection with a belt conveyor to deliver building materials left the track, causing him to fall from the step of the car where he was stationed to perform his duties, and it appears that it would have been practicable to use some mechanical means to keep the car on the track, it having in the past shown a tendency to tip over, rather than to depend upon the physical strength of workmen to hold it on the track, the jury is justified in finding the master negligent in failing to supply a safe place in which to work. *Giovagnoli v. Fort Orange Construction Co.* (1911), 148 App. Div. 489.

Safe place to work not involved where doing of work made place dangerous.—When excavating a railroad cut involves the blasting of rock and removal of the debris by a steam shovel moved forward on tracks during the progress of the work, and a laborer employed in the cut to clean the drill holes and to clean and relay the tracks is injured while taking out a drill from a piece of rock then in the bucket of the steam shovel, in consequence of being struck by a piece of rock which had partly wedged in the side of the cut and which fell down upon him, the question as to whether his master furnished a safe place in which to work is not involved as it was the doing of the work which made the place dangerous. *Caciatore v. Transit Construction Co.* (1911), 147 App. Div. 676.

"Appliances" include skids placed across a trench in order to lower heavy pipes down a hillside. *Tamaseric v. Beckwith* (1911), 145 App. Div. 78, 129 N. Y. Supp. 361.

"Works or machinery."—A hoisting derrick and cable used to place structural ironwork in position are "works or machinery" within the meaning of the statute. *McGlynn v. Pennsylvania Steel Co.* (1911), 144 App. Div. 343, 129 N. Y. Supp. 45.

In an action to recover damages for the death of the plaintiff's intestate, it appeared that the defendant maintained in its factory a traveling crane suspended below the girders of which was a cage in which the operator of the crane sat; that a ladder was bolted to the cage at the bottom and at the top bar thereof, which ladder extended above the top bar forty-two inches, and that for that distance the ladder was not fastened. The intestate, who was a rigger weighing about 218 pounds, had together with other employees of the defendant used the ladder for a long time and on the date of the accident while working on the girder of the crane he was told by an employee, who stood below him, to come down and assist him. The intestate when next seen was falling to the floor of the building. While no one saw the intestate upon the ladder it was observed that the part of the ladder which extended above the place where it was fastened was bent outwards nearly at right angles, and immediately after the accident the intestate told employees, who went to his assistance, that the ladder bent over with him. It was held that the dismissal of the complaint was error; that it could not be said, as a matter of law, that the intestate had no right to use the ladder, or was guilty of contributory negligence, or that the defendant was not negligent in maintaining the ladder in said condition. *Greener v. General Electric Co.* (1911), 147 App. Div. 462.

Acts of superintendence; what constitute.—Where the fall of the derrick was

caused by the failure of an employee to fasten down the boom of the derrick after having been told to do so by the superintendent, the omission was a mere detail of the work and not a failure in an act of superintendence if the employee was given no discretion to determine whether or not the boom should be fastened. Even if it be assumed that a direction to the plaintiff to go to the top of the derrick given by the person who had failed to secure the boom as ordered by the superintendent was an act of superintendence on his part—which, *it seems*, it was not under the circumstances—the direction was improper only because of the previous negligence of the plaintiff's fellow-servant in disobeying the instruction to fasten the boom and for that failure the master is not liable. *Pratt v. McKee* (1911), 147 App. Div. 72, 131 N. Y. Supp. 763.

In a negligence action brought against an employer to recover damages resulting from the death of an employee who fell down the shaft of an open platform elevator used to transport material in a building under construction while he was attempting to board the elevator for the purpose of removing material therefrom, it is improper for the court to charge that "if a manner of operating the hoist was one in common general use at the time in the locality where such operations were going on by many contracting concerns, then it must be held to have been a proper one." When the foreman of laborers engaged in removing materials from such elevator, and under the duty of giving signals governing the movement of the elevator, is not a superintendent within the meaning of the Employers' Liability Act discussed. *Croghan v. Hedden Construction Co.* (1911), 147 App. Div. 631.

Action by a servant against his master to recover for injuries sustained while working on a printing press by reason of the act of a fellow-servant who is alleged to have been incompetent and whom it is alleged defendant's superintendent, with knowledge of his incompetency, negligently assigned to help plaintiff. Evidence examined, and held, to fail to show that the fellow-servant was in fact incompetent. *Wesel v. Powers Co.* (1911), 147 App. Div. 167, 132 N. Y. Supp. 134.

Where in an action to recover damages resulting from the death of the plaintiff's intestate, the plaintiff serves a bill of particulars in which the only allegation of negligence relating to acts of superintendence was that the alleged superintendent had caused the intestate to go upon an unsafe scaffolding and had failed to safeguard him while in the performance of his work, it is error for the court, in the absence of an amendment to the complaint and over the defendant's claim of surprise, to submit to the jury the question of the negligence of the alleged superintendent in giving a direction for the slackening of a rope, and to refuse to allow the defendant permission to withdraw a juror because the superintendent was not in court. *Adams v. Post & McCord* (1911), 147 App. Div. 656.

Where in an action under the Employers' Liability Act to recover for personal injuries sustained by a workman who, while working under the suspended bucket of a steam shovel, was injured because a fellow-servant in ascending the arm of a crane to replace the rope struck with his foot a lever which held the bucket in position, so that it fell upon the plaintiff, it appears that the engineer in charge, upon having had his attention called by the plaintiff to the dangerous position of the bucket, and upon being requested to have the bucket swung into another position, replied, "It's all right; go ahead; don't be afraid; don't be afraid," the jury was justified in finding that the determination of the engineer not to swing the bucket in a different position was an act of superintendence rather than a detail of the work. *Impellizzeri v. Crawford* (1912), 148 App. Div. 758.

An employee on being directed by a general superintendent to superintend a piece of work becomes a superintendent of that particular work if the entire matter be turned over to him without interference from the general superintendent, especially on a piece of work requiring supervision. Express authority to so act is

not required to be given by the master himself. *Proctor & Gamble Co. v. Williams*, 183 Fed. 695 (1910).

A subforeman or "pusher" in charge of a particular piece of work is a superintendent. *Pennsylvania Steel Co. v. Lakkonen*, 181 Fed. 325 (1910).

Act of superintendence.—Where a superintendent started up a loom which plaintiff was cleaning, his act was one of superintendence. He determined as a matter of superintendence that at that precise time that particular machine should be set going, and, having thus determined, it is immaterial whether it was actually started by the hand of a subordinate obeying his spoken order or by his own hand obeying the exercise of his own will. *American Mfg. Co. v. Bigelow*, 188 Fed. 34 (1911).

The master of a vessel who has sole charge of its navigation is one whose sole or principal duty is that of superintendence within the meaning of the statute. *Trauffer v. Detroit & Cleveland Navigation Co.*, 181 Fed. 256 (1910).

When act of superintendence question for the jury. *Lewis v. Koller & Smith*, 186 Fed. 403 (1911).

Incompetent fellow-servant.—Where one of plaintiff's fellow-servants was so standing upon a ladder that he had to reach above his head to support the end of a wet and slippery plank weighing 100 pounds, the jury were warranted in finding that the plaintiff's fellow-servant was incompetent, and where the foreman knew how the work was being done to hold the defendant liable for allowing the work to proceed in that dangerous manner. *Chinn v. Ferro-Concrete Construction Co.* (1911), 148 App. Div. 368.

Vice-principal.—A servant upon whom the duty of inspection of machinery is cast is a vice-principal of his master. *McGlynn v. Pennsylvania Steel Co.* (1911), 144 App. Div. 343, 129 N. Y. Supp. 45.

Liability of employer for medical services contracted by superintendent.—Where the superintendent had no power, express or implied, to incur any extended liability for medical services rendered to an employee, any agreement for such services made by him with the physician would not be binding on his employer. *Giovagnoli v. Fort Orange Construction Co.* (1911), 148 App. Div. 489.

Pleading; failure to promulgate rules.—A master's negligence in failing to promulgate proper rules for the conduct of his business must be pleaded in order to be available, and the burden is on the plaintiff to prove the allegation. *Edgar v. Brooklyn H. R. R. Co.* (1911), 146 App. Div. 541, 131 N. Y. Supp. 286.

§ 201. Notice to be served.

Sufficiency of notice.—A notice is sufficient where it states the physical cause of the injury so that the master is informed as to the particular thing or things out of which the injury resulted so that he may make the necessary inquiries as to the fact and its attendant circumstances. *McGlynn v. Pennsylvania Steel Co.* (1911), 144 App. Div. 343, 129 N. Y. Supp. 45.

A notice is sufficient where, having given the time and place of the accident, it states in substance that the cause of the death of the plaintiff's intestate was that he was directed to work in a dangerous place by one S., a co-employee having general power of superintendence, and that while working in that place he was killed by the explosion of a charge of dynamite. A notice need not state all the facts going to establish the cause of action as they would be stated in a complaint. Where it states a definite and precise cause of the injury received, as, for example, an explosion of dynamite, it need not state how the dynamite was exploded or the exact physical connection between the explosion and the injury, especially where the accident resulted in death. *Dippolito v. Brown* (1911), 148 App. Div. 116.

A notice specifically informing the master that he will be charged with negligence on the ground that he employed an improper method of doing work, need not state that the improper method was adopted by the master's superintendent rather than

§ 201.

Employer's liability for injuries.

by the master himself. *Tamaseric v. Beckwith* (1911), 145 App. Div. 78, 129 N. Y. Supp. 361.

Where a notice in regard to the place and cause of the injury states merely "That because of the greasy and slippery and defective condition of the floor around and about the machine" at which plaintiff was at work, "he slipped and his left hand was caught in said machine, thereby amputating three fingers," and that defendant failed to furnish proper and sufficient lights at the place where plaintiff was working, while the evidence shows that the accident occurred at a place remote from plaintiff's machine and upon an entirely different one, he is not entitled to the benefits of the Employers' Liability Act. *Welch v. Waterbury Co.* (1911), 144 App. Div. 213, 128 N. Y. Supp. 974.

A notice in substance as follows is insufficient: "I was on May 25th, 1907, injured [nature and place of injury stated] by your negligence. You were so negligent in the following respects: (1) You did not provide a reasonably safe place to work; (2) you did not provide competent foreman or superintendent and fellow-workmen; (3) you did not provide and enforce proper rules for my safety; (4) you permitted blasts without notice or proper protection; (5) you failed properly to guard me from such blasts; (6) you negligently conducted your work at the place," "by reason of all of which a blast was shot off and I was hit by a rock" from the same and injured. *Fontiorio v. New York Contracting Co.* (1911), 147 App. Div. 138, 131 N. Y. Supp. 174.

Statement as to cause of injury.—A notice which merely states that the plaintiff while employed by the defendant on a certain day "was directed to go to the top of the mast of a derrick then being used by your company on a job at or near the corner of Flushing and Kent avenues, Brooklyn, for the purpose of assisting in moving the steel boom of said derrick from one side of a guy-rope supporting said derrick to the other side of said guy-rope; that while engaged in this work said derrick fell over" and injured the plaintiff, is insufficient in that it does not properly state the physical cause of the injury. *Pratt v. McKee* (1911), 147 App. Div. 72, 131 N. Y. Supp. 763.

The following notice complies with all the requirements of the statute:

"You will please take notice, that on the 19th day of January, 1909, about 11 o'clock p. m., while I was in your employ as watchman and helper at your car barn and repair shop, situate in the Town of Gates, west of the City of Rochester, I was injured by falling from the top of a car which was at the time standing in said barn for repairs. The said car was brought into the barn with a damaged trolley pole, and the repairs consisted in taking out that trolley pole and inserting another. The car was run into the barn on a track having a trolley wire over it, and I was sent to the top of the car to make the change of trolley poles. The power, or electric current, is supposed to be turned off from the trolley wire in said barn and from said car at such a time when repairs are taking place. After the old trolley pole was removed, and while I was standing on the top of the car, a new trolley pole was handed to me, and as I attempted to insert it in the socket it touched the trolley wire and I received a shock of electricity, which threw me to the ground, injuring my spine so that I am paralyzed and helpless." *Grief v. Buffalo, L. & R. Ry. Co.* (1912), 205 N. Y. 239.

The federal courts will follow the construction of the statute approved by the state court of last resort. Notice in this case examined and found sufficient. *Pennsylvania Steel Co. v. Lakkonen*, 181 Fed. 325 (1910).

Insufficient notice.—A notice which enumerates at length all the possible statutory grounds of liability, but alluding to the accident or cause of injury only in these few concluding words: "Certain material was caused and permitted to fall upon and injure me," is insufficient under the statute. *New England Navigation Co. v. Lulliano*, 192 Fed. 551 (1911).

Notice not defective by reason of certain alleged omissions. *United States Gypsum Co. v. Sliwienska*, 183 Fed. 688 (1910).

A verification added at the end of a notice given under the Employers' Liability Act is properly a part thereof and the signature of the claimant at the end of the verification is a sufficient signing of the notice. *Connor v. Acme Engineering & Contracting Co.* (1911), 148 App. Div. 518.

§ 202. Assumption of risks; contributory negligence, when a question of fact.

The modification of the doctrine of contributory negligence provided by this section relates only to the question as to whether the employee's continuance in the employment after knowledge of the conditions causing the injury amounts to contributory negligence of itself, which is made one of fact subject to the power of the court to set aside a verdict which is contrary to the evidence. *Broadbent v. N. Y. Evening Journal Pub. Co.* (1911), 47 App. Div. 133, 131 N. Y. Supp. 780. This section has not relieved the employee of the burden of establishing his freedom from contributory negligence as an essential element of his case. *Fitzgerald v. Newton Falls Paper Co.* (1912), 204 N. Y. 184.

The Employers' Liability Act does not relieve the plaintiff from showing that he, at the time of the accident, was free from any act which contributed to his injury. The plaintiff is just as much bound to show his own freedom from contributory negligence as he is to show that the accident was due to some negligent act of the defendants. *Pullis v. Stewart* (1912), 75 Misc. 268.

Where a pressman employed in a printing establishment, in order to place tags on forms, raises two forms to a perpendicular and leans them against his own body while he affixes the tag to a third form, but, the weight of the two forms being too great for him to sustain, they fall over upon him and injure him, he is guilty of contributory negligence and cannot recover against his employer. *Faha v. Wynkoop, H. & C. Co.* (1911), 72 Misc. 391, 130 N. Y. Supp. 184.

Distinction between inherent and obvious risks.—Distinction between inherent risks of the business; i.e., those arising after the master has discharged his duty and the obvious risks; and those arising from the master's negligence, which the servant assumes by voluntarily continuing in a position of danger with full knowledge of it, should be carefully observed. *Jenkins v. Phoenix Construction Co.* (1911), 145 App. Div. 183, 129 N. Y. Supp. 937.

Assumption of risk and contributory negligence are for the jury in an action under the Employers' Liability Act. *Larsen v. Lackawanna Steel Co.* (1911), 146 App. Div. 238, 130 N. Y. Supp. 187; *Sereno v. D. L. & W. R. Co.* (1911), 145 App. Div. 136, 129 N. Y. Supp. 159.

Continuing in the employment of the master with knowledge of danger does not, as a matter of law, show that the servant assumed the risk, but the question is one for the jury. *Chernick v. Independent American Ice Cream Co.* (1911), 72 Misc. 79, 129 N. Y. Supp. 694.

§ 202-a. Trial; burden of proof.

Burden of proof to establish negligence and freedom from contributory negligence; section to be construed prospectively.—In an employee's action against the master to recover for personal injuries sustained prior to the enactment of section 202-a of the Labor Law (L. 1910, ch. 352) the burden of proof is upon plaintiff to establish the negligence of the defendant and plaintiff's intestate's freedom from contributory negligence. *Banchetti v. Williams & Co.* (1912), 75 Misc. 262.

Section 202-a of the Labor Law, providing that "On the trial of any action brought by an employee or his personal representative to recover damages for negligence

§ 48.

Publication of session laws.

* * * contributory negligence of the injured employee shall be a defense to be so pleaded and proved by the defendant," must be read in connection with section 202 of the Labor Law, which declares that it has reference to actions brought to recover damages for injuries or death resulting therefrom, received "after this act takes effect," and must be construed prospectively. *Idem*.

Said section 202-a does not relate merely to practice and procedure but affects a substantial right and has no application upon the trial of an action by an employee against his master for accidental injuries, resulting in death, sustained prior to the enactment of said section 202-a. *Idem*.

This section added by chapter 352 of the Laws of 1910, which relieves the plaintiff from showing want of contributory negligence in actions for personal injuries, and makes it a defense to be pleaded and proved by the defendant, is not retroactive. *Grief v. Buffalo, L. & R. Ry. Co. (1912), 205 N. Y. 239.*

LAKE CHAMPLAIN.

Time for report of commission extended to Legislature of 1913, and powers broadened to include permanent "memorials" instead of "memorial," by L. 1912, ch. 273, in effect Apr. 11, 1912.

LARCENY.

Grand, in second degree; Penal L., § 1296.

LEGISLATIVE LAW.

(L. 1909, ch. 37.)

§ 48. Publication of session laws.

The designation by supervisors of a newspaper to publish session laws and concurrent resolutions is an administrative act, and the same should not be ignored and treated as a nullity by the Secretary of State in the absence of a judicial determination to that effect. *Rept. of Atty. Genl., Jan. 17, 1912.*

LIEN LAW.

(L. 1909, ch. 38.)

§ 3. Mechanic's lien on real property.

Consent of owner.—Where a lease provided that the tenant should have a steam heating plant installed for which he was to be allowed \$200 a month by way of deduction from the rent, and the landlord subsequently sent a contractor who had done such work for her on other premises to the tenant to make an agreement for the work, the contractor, who thereupon saw the tenant, secured the contract and performed the work for which the tenant refused to pay, can maintain an action to foreclose a lien against the premises for the value of his services, and, the facts having been shown, it is error to dismiss the complaint at the close of plaintiff's case. The provision in the lease in reference to the work and the act of the landlord in directing it constituted a consent thereto on the part of the owner within the meaning of this section. *Meistrell v. Baldwin* (1911), 144 App. Div. 660, 129 N. Y. Supp. 670.

§ 4. Extent of lien.

Enforcement of lien by sub-contractor.—A sub-contractor, seeking to enforce a mechanic's lien against real property, must show that there is a balance due from the owner to the original contractor to which the lien may attach. *Wexler v. Rust* (1911), 144 App. Div. 296, 128 N. Y. Supp. 977.

§ 5. Liens under contracts for public improvements.

"Furnishing materials" as used in this section means supplying towards the making of a structure matter which may become a part thereof, or which is expended in the labor incident to the erection thereof. One who rents a steam shovel does not furnish materials within the meaning of this section and is not entitled to a lien for unpaid rental. *Troy Public Works Co. v. City of Yonkers* (1911), 145 App. Div. 527, 129 N. Y. Supp. 920.

§ 9. Contents of notice of lien.

Sufficiency of notice.—Where a notice of lien states facts from which, by mathematical calculation, it can be ascertained what is the value and agreed price of labor completed and materials furnished and the amount unpaid, the notice sufficiently complies with the requirements of this section. *Krauss v. Brunett* (1911), 73 Misc. 423, 130 N. Y. Supp. 1086.

A notice of mechanic's lien which only states that the labor performed and the materials furnished were done in pursuance of a contract made between the lienor and the defendant and that the agreed price was a stated sum is insufficient. *Ball v. Doherty* (1911), 144 App. Div. 277, 128 N. Y. Supp. 1014.

A notice of lien must state that so much labor has been performed or so much material has been furnished for the work and that a certain amount remains unpaid, and if it fail to do so, it is fatally defective. *Riley v. Durfey* (1911), 145 App. Div. 583, 130 N. Y. Supp. 297.

Omission in the notice of lien cannot be supplemented by evidence upon the trial. *Riley v. Durfey* (1911), 145 App. Div. 583, 130 N. Y. Supp. 297.

§ 10. Filing of notice.

If a notice of mechanic's lien is filed during the progress of the work it should contain a statement of what labor has been performed, what materials have been furnished and what still remains to be done, with a statement as to the amount

§§ 12, 15, 17, 18.

Duration of lien.

unpaid to the lienor under the contract. Unless these requirements be complied with the lien is invalid. *Romanik v. Rapoport* (1912), 148 App. Div. 688.

A statement in the notice of lien that "the labor to be performed is putting up all ironwork on premises" is not, when read in connection with other statements in said notice, equivalent to a statement that no work has been done on the premises described in the notice under the contract between the lienor and the persons employing him. Such language should be deemed to relate to the nature of the contract filed during the progress of the work, when the next sentence states that the labor performed was putting up all ironwork on seventeen buildings, with a statement of the material furnished. *Idem*.

Notice of lien examined, and held, to be insufficient to create a lien in that it failed to state that there was work still to be done and material still to be furnished, and because it contained a deliberate misstatement as to the amount due. *Idem*.

§ 12. Notice of lien on account of public improvements.

The distinction between liens upon private property and upon funds accruing to contractors for public improvements is clear cut and well defined. *Bradley & Son v. Huber Co.* (1911), 146 App. Div. 630, 131 N. Y. Supp. 388.

Liens filed by laborers and material-men against a sub-contractor for public improvements are effective only to the extent of the amount due or to become due to the sub-contractor on his contract and not to the extent of any moneys which may be due the principal contractor upon his contract with the state. *Upson v. United Engineering & Contracting Co.* (1911), 72 Misc. 541, 130 N. Y. Supp. 726.

Failure to state the date when the amount claimed became due in the notice of lien for a public improvement is a sufficient ground for the dismissal of the complaint in the suit to foreclose such a lien. *Bradley & Son v. Huber Co.* (1911), 146 App. Div. 630, 131 N. Y. Supp. 380.

§ 15. Assignments of contracts and orders to be filed.

Application of section.—An order given by the owner of real property in the city of New York, to one who has performed labor and furnished materials for the erection of a building thereon upon a corporation who has agreed to make a building loan to the owner for the amount due for such labor and materials and which is accepted by the corporation making the loan, is within the provisions of this section, and the failure to file the same constitutes a defense to an action against the acceptor upon the order, where a prior lien against the property has been filed. *Tolkow v. Metropolitan Life Ins. Co.* (1911), 73 Misc. 393, 133 N. Y. Supp. 367.

"Improvement of real property" does not include the construction of a mausoleum. *Brown v. City Nat. Bank* (1911), 72 Misc. 201, 208, 131 N. Y. Supp. 92.

§ 17. Duration of lien.

Application of this section is limited solely to liens upon private property. *Bradley & Son v. Huber Co.* (1911), 146 App. Div. 630, 131 N. Y. Supp. 388.

§ 18. Duration of lien under contract for a public improvement.

Application of section.—A mechanic's lien upon a municipal improvement is not kept alive by the fact that the lienors are made parties defendant in a suit of foreclosure brought by another lienor, as section 17 of the Lien Law relates solely to liens upon private property. The suit should be dismissed as against other lienors made parties defendant where they failed to keep their lien alive, as required by this section, by neglecting to serve a *lis pendens* within three months, or by serving an answer on the other parties within that time, or by applying to the court for an order continuing their liens. *Bradley & Son v. Huber Co.* (1911), 146 App. Div. 630, 131 N. Y. Supp. 388.

§ 19. Discharge of lien generally.

Discharge of owner and sureties on bond.—Where an action to foreclose a mechanic's lien is not brought within one year after the filing of the lien, or the lien continued by an order of the court within the same period, all liability upon a bond given to discharge the lien terminates, and the owner of the property and the surety on the bond are entitled to be released from its obligation. *Matter of Thornton Apartment Co.* (1911), 74 Misc. 210, 133 N. Y. Supp. 756.

Liability of sureties.—The sureties on a bond given on the discharge of a mechanic's lien pursuant to statute are not liable to the lienor unless he establishes a valid lien. *Romanik v. Rapoport* (1912), 148 App. Div. 688.

Execution of undertaking.—A contractor may obtain an order fixing the amount of an undertaking to discharge a lien filed against a sub-contractor though the notice of lien omits to mention the name of the principal contractor. *Matter of Hedden Construction Co.* (1911), 72 Misc. 153, 129 N. Y. Supp. 827.

§ 24. Action to enforce mechanic's lien.

An action to foreclose a mechanic's lien is no bar to an action against the contractor or other party liable for the debt; both remedies may be pursued simultaneously, but the lienor can have but one satisfaction. *Pierce v. Kinney* (1912), 75 Misc. 328.

Proper parties defendant.—Where real estate is conveyed just prior to the commencement of an action to foreclose a mechanic's lien thereon, the grantor is a proper but not a necessary party defendant. *Pierce v. Kinney* (1912), 75 Misc. 328.

The complaint in an action by a sub-contractor to foreclose a mechanic's lien should allege that at the time the lien was filed or thereafter money was due from the owners to the contractor, otherwise it fails to state a cause of action. *Wood Manufacturing & Realty Co. v. Johnstone* (1912), 148 App. Div. 747.

§ 49. Issue how tried; judgment.

Trial by jury.—Where a complaint in an action to foreclose a mechanic's lien is insufficient so that the plaintiff can recover only a money judgment for work, labor and services and materials furnished, the defendant is entitled to a trial by jury. *Schwartz v. Klar* (1911), 144 App. Div. 37, N. Y. Supp.

§ 59. Vacating of mechanic's lien by order of court.

A notice required by this section may be given by a contractor who has employed one who has filed a mechanic's lien. *Matter of W. C. I. Works v. N. Y., Queens Elec. Light & Power Co.* (1911), 73 Misc. 242, 130 N. Y. Supp. 944.

Right to have lien discharged.—Where the lienor has brought an action against the contractor upon the claim for which the lien was filed, and the opposition of the contractor to advancing the case for trial is justified by the decision of the court that it should not be advanced, the contractor who had given the lienor the notice required by this section is entitled to have the lien discharged and not held to await the trial of the action at law. *Matter of W. C. I. Works v. N. Y. & Queens E. L. & P. Co.* (1911), 73 Misc. 242, 130 N. Y. Supp. 944.

§ 60. Judgment in action to foreclose lien on account of public improvement.

To entitle a lienor to recover on a lien against a municipality it is incumbent upon him to show either that the contractor performed his contract, and that by reason of such performance some amount became due and owing thereon, or that by reason of some special provision of the contract there was when the lien was filed something due such contractor thereon or that something became due him upon

 §§ 62, 80, 120, 181, 230.

 Chattel mortgages.

it thereafter applicable to the payment of such lien. *Herrman & Grace v. Hillman* (1911), 203 N. Y. 435.

§ 62. Public contracts; laborers and materialmen to be secured.

Constitutionality of section as amended questioned. *People ex rel. Burgard Co. v. City of Buffalo* (1911), 73 Misc. 356, 130 N. Y. Supp. 1073.

§ 80. Liens on vessels.

Maritime liens.—The provisions of the New York law are expressly limited in application to debts which are not liens by maritime law. Where the items are not of such a nature that a maritime lien (such as salvage, towage, pilotage and wages) will be presumed, and the items are of such a sort as are defined in the New York statute, the lien must be judged by the lien law of the state. *The Colfax*, 179 Fed. 975 (1910).

§ 120. Liens on monuments, gravestones and cemetery structures.

Article must be strictly construed.—*Brown v. City Nat. Bank* (1911), 72 Misc. 201, 131 N. Y. Supp. 92.

Application; furnishing mausoleum.—This section does not apply to the materialman or to the men who have done work upon materials furnished, but applies only to the man who took the contract for furnishing and did furnish a mausoleum. *Brown v. City National Bank* (1911), 72 Misc. 201, 206, 131 N. Y. Supp. 92.

§ 181. Lien of hotel, etc., keeper.

The filing of a chattel mortgage upon property brought by a guest to a hotel is not constructive notice to the keeper of the hotel of the existence of the mortgage so as to deprive him of his lien as an innkeeper under this section. Thus, where a guest brings to a hotel a piano which he mortgages and of which he retains possession after default, the lien of the hotel keeper under this section is superior to that of the mortgagee. *Matthews v. Victor Hotel Co.* (1911), 74 Misc. 426, 132 N. Y. Supp. 375.

§ 230. Chattel mortgage to be filed.

A chattel mortgage given to secure negotiable paper is subject to the same rights and equities in favor of third parties as one given to secure a bond or other obligation or indebtedness. *Elias Brewing Co. v. Boeger* (1911), 74 Misc. 547.

Notice to assignee of prior mortgage.—Where, at the time of taking an assignment of a chattel mortgage, another mortgage on the same property, though filed subsequently to the mortgage that is assigned, states that it is a first mortgage, the person taking the assignment is put upon inquiry; and, where proper inquiry would have disclosed facts showing that the latter mortgage though subsequently filed was in fact a first mortgage, he is chargeable with knowledge of such fact. Thus, where a married woman in taking a chattel mortgage is represented by her husband who acts for her in the whole transaction, she is chargeable with her husband's knowledge of the fact that her mortgage is a second mortgage; and a purchaser from her in good faith and for value takes subject to the notice and knowledge she possesses. *Elias Brewing Co. v. Boeger* (1911), 74 Misc. 547.

The term creditors includes all creditors, and not only those prejudiced by the failure to file. *In re Schmidt*, 181 Fed. 73 (1910).

§ 231. Corporate mortgages against real and personal property.

Application of section.—*Clement v. Congress Hall* (1911), 72 Misc. 519.

§ 232. Where filed.

Disposal of chattel mortgages by recording officers after discharge.—Municipal recording officers have no right to destroy chattel mortgages filed in their offices even after the mortgages have been discharged. Such records as are not in general use should be transferred to the division of public records under the control of the Regents of the University of the State of New York. Rept. of Atty. Genl., Jan. 27, 1912.

§ 235. Mortgage invalid after one year, unless statement is filed.

Renewal.—On the expiration of a year from the date of the original filing of a chattel mortgage, it becomes invalid, in the absence of filing the required statement, and it cannot be resuscitated by filing the statement five months thereafter. In re Watts-Woodward Press, 181 Fed. 71 (1910).

LIQUOR TAX LAW.

(L. 1909, ch. 39.)

§ 8. Excise taxes upon the business of trafficking in liquors; enumeration.

Application of subdivision 9.—The provision of subdivision 9 of this section, as amended by Laws of 1910, chapter 494, relating to the issuance of liquor tax certificates, contained two exceptions, one in a case where the place abandoned was a hotel and the other in a case where the new place was a hotel, and under said subdivision, prior to the enactment of chapter 287 of the Laws of 1911, by which the exemptions in relation to hotels were eliminated, it was not necessary if either the old or the new place was a "hotel" within the definition of the statute that the traffic in liquors be actually carried on in the new premises within sixty days of the filing of a notice of abandonment. *People ex rel. Higgins v. Hegeman* (1912), 75 Misc. 163.

§ 12-a. Assignments or transfers of certificates as collateral security to be filed in office of certificate issuing officer.—Each county treasurer of a county or each special deputy commissioner of excise, if there be one, shall receive and file in his office every instrument in writing, tendered to him, by which an unexpired liquor tax certificate, issued by him or by his predecessor in office, or any other liquor tax certificate hereafter issued by him or his successor in office, is assigned or transferred by the holder thereof to a person as collateral security for moneys loaned or any other obligation incurred; and such county treasurer or special deputy, as the case may be, shall immediately enter in a record book to be kept by him for that purpose the name of the certificate holder, the location of the premises for which such certificate was issued, or to which such certificate may have been transferred, under what subdivision of section eight the certificate was issued, the date when issued, the name and the address of the assignee or transferee, the date of such assignment or transfer, the date such assignment or transfer was received and filed and the date of the cancellation and discharge of the same; such county treasurer or special deputy, as the case may be, shall immediately indorse upon said assignment or transfer the date of the receipt of same, the name of the holder of the certificate, the name of the assignee or transferee, the number of the certificate, the location of the premises for which the certificate was issued, or to which such certificate may have been transferred, the date of the issuance of the same, under what subdivision of section eight the certificate was issued and the date of the assignment or transfer; said indorsement shall be signed by said county treasurer, or special deputy, in whose office the same is filed and such indorsement shall be received in evidence in all courts of this state and shall be competent and sufficient prima facie evidence of all the facts stated therein. (*Added by L. 1912, ch. 263, in effect Apr. 11, 1912.*)

§ 13. Local option to determine whether liquor shall be sold under the provisions of this chapter.

A special town meeting held pursuant to an order of a court or judge for the re-submission of questions under this section, should be under the direction of the same officers who conducted the regular town meeting. Rept. of Atty. Genl., Feb. 8, 1912.

The canvass of the vote is part of the submission of the four local option questions specified in this section and such questions have not been properly submitted unless the vote has been properly canvassed and a return made. Matter of Norton (1912), 75 Misc. 180.

§ 15. Statements to be made on application for liquor tax certificates.—
Subdivision 8, amended by L. 1912, ch. 378, in effect Apr. 15, 1912, as follows:

8. When the nearest entrance to the premises described in said statement as those in which traffic in liquors is to be carried on is within three hundred feet, measured in a straight line, of the nearest entrance to a building or buildings occupied exclusively for a dwelling, there shall also be filed simultaneously with said statement a consent in writing that such traffic in liquors be so carried on in said premises during a term therein stated, executed by the owner or owners, or by a duly authorized agent or agents of such owner or owners of at least two-thirds of the total number of such buildings within three hundred feet so occupied as dwellings, and acknowledged as are deeds entitled to be recorded, except that such consent shall not be required in cases where such traffic in liquor was actually lawfully carried on in said premises so described in said statement on the twenty-third day of March, eighteen hundred and ninety-six, nor shall such consent be required for any place described in said statement which was occupied as a hotel on said last mentioned date, notwithstanding such traffic in liquors was not then carried on thereat. Whenever the consents shall have been obtained and filed as required by law at the time of such filing, unless the same be given for a limited term, no further or other consent for trafficking in liquor on such premises shall be required so long as such premises shall be continuously occupied for such traffic.

If a liquor tax certificate shall be revoked and canceled under section twenty-seven of this chapter, or forfeited under any other section of this chapter, after the first day of May, nineteen hundred and five, the traffic in liquors shall not thereafter be carried on at the premises for which such certificate was issued, nor any liquor tax certificate obtained therefor so long as said premises continue to be occupied, not exceeding one year, by the person who was the holder of the forfeited certificate at the time of the commission of the act complained of, or occupied by a member of his family, his agent or by any person in his employ, or representing him, or so long as the said former certificate holder shall be interested in the traffic in liquors to be continued at said premises under a new certificate, unless there shall be obtained and filed simultaneously with the application statement of such certificate, a consent in writing that such traffic in liquors be so carried on in said premises, as required by the general provisions

of this subdivision, notwithstanding such traffic in liquor may have been actually lawfully carried on in said premises on the twenty-third day of March, eighteen hundred and ninety-six, or said premises occupied as a hotel on said last mentioned date, and notwithstanding said premises may have been continuously lawfully occupied for such traffic in liquors or may have been continuously occupied for a hotel from a date prior to the date when a building or buildings on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a church or schoolhouse, and notwithstanding the consents required by this subdivision, given for an unlimited term, shall have been previously obtained and filed, and if the violation of law for which the cancellation or forfeiture of said certificate was had was that any person while the holder of a liquor tax certificate issued for said premises or his agent had suffered or permitted said certificated premises or any yard, booth, garden or any other place appertaining thereto or connected therewith to become disorderly or had suffered or permitted any gambling in the place designated by the liquor tax certificate as that in which the traffic in liquor was to be carried on, or in any yard, booth, garden, or in any other place appertaining thereto or connected therewith, no new certificate shall be issued for said premises to any person and no person shall traffic in liquor in said premises for the period of one year from the date of the entry of a final order cancelling such certificate, or from the date of the conviction of any person while the holder of a liquor tax certificate issued for said premises or his agent for a violation of section eleven hundred and forty-six or any section under article eighty-eight, of the penal law; provided: That if an appeal be taken from such final order cancelling such certificate or from the judgment of conviction for such crime committed on said premises, and if upon motion there shall be issued a stay of the penalties provided by this law as the result of such cancellation or conviction, and if the appellate court shall affirm on appeal the order cancelling such certificate or the conviction for such crime, then no person shall traffic in liquors at the said premises for the period of one year from the date of the entry of the order affirming on appeal such cancellation or conviction: Provided, that the discontinuance of traffic in liquors for one year or less, by reason of the provisions of this section, shall not operate or be construed to forfeit any right of traffic which, under the provisions of this section, attached to the place for which such forfeited or revoked certificate was held. (*Subd. amended by L. 1909, ch. 281; L. 1910, chs. 485 and 503; L. 1911, ch. 643 and L. 1912, ch. 378, in effect Apr. 16, 1912.*)

Statements in application presumed to be true.—A liquor tax certificate is presumed to have been issued on the assumption that the facts set forth in the application are true, and for the purpose of avoiding subsequent liability the liquor tax certificate holder or his security cannot be heard to say they were false. *Farley v. Scherno* (1911), 147 App. Div. 375, 132 N. Y. Supp. 170.

Application of subd. 8.—The provisions of this section, prohibiting the issuance of a liquor tax certificate on premises where a former occupant has been convicted

L. 1912, ch. 264.

Illegal sales.

§§ 27, 30.

of a violation of the law until the expiration of one year from the date of such conviction, cannot be construed to affect the rights of parties to a contract executed before the enactment of said provision. *Mudge v. West End Brewing Co.* (1911), 145 App. Div. 28, 130 N. Y. Supp. 350.

§ 27. Certiorari upon refusal to issue or transfer liquor tax certificates, and of the revocation and cancellation of a liquor tax certificate.

Disorderly premises.—*Matter of Clement (Ruehl Certificate)* (1911), 144 App. Div. 156, 128 N. Y. Supp. 882.

§ 30. Other illegal sales and selling.—*Subdivision F, amended by L. 1912, ch. 264, in effect Apr. 11, 1912, as follows:*

F. To permit any girl or woman, not a member of his family, or any minor under the age of eighteen years, or to knowingly permit any person who has been convicted of a felony, to sell or serve any liquor upon the premises; or to permit any person described in section twenty-nine of this chapter as "persons to whom liquor shall not be sold or given away" to enter and remain in any barroom where liquors are sold; or

The character of premises for the purpose of featuring a liquor tax certificate must be determined as of the time when the application for such certificate is made and if the premises are to be used as a hotel the application must so state; otherwise no certificate can issue conferring the privilege of conducting a hotel on the premises no matter how full or ample its structural requirements may be. *People ex rel. Higgins v. Hegeman* (1912), 75 Misc. 163.

The word "hotel," as used in the Liquor Tax Law, § 30, subd. N, contemplates only such a structure as complies with this subdivision. The fact that a building has only five bedrooms instead of six, one of which was materially deficient in floor area and air space and four of which had no independent access by a door leading into a hallway, and that said premises also failed to comply with the structural requirements of a hotel as prescribed by this subdivision is ground for refusing the certificate. *People ex rel. Higgins v. Hegeman* (1912), 75 Misc. 163.

Proximity of gambling-room to barroom.—Where the keeper of a saloon has an entrance from his barroom on the ground floor into the hall of the building adjoining, near the foot of a flight of stairs leading to the second floor, where there is a gambling-room, and waiters use the entrance to get liquors from the bar, in the presence of the saloon-keeper, to serve in the gambling-room to the patrons thereof, he is guilty of a violation of the statute. *Matter of Farley (Fisher Certificate)* (1911), 73 Misc. 543, 131 N. Y. Supp. 113.

Where the ground floor of a two-story building is occupied by the lessee of the entire building who conducts a saloon there, and a tenant of the second floor under a prior lease who continues as tenant and pays rent to the saloon-keeper maintains a gambling-room on the second floor; and where the saloon-keeper and the proprietor of the gambling-room have access to their respective premises through a common hallway which is also the only means of communication between the room used as a saloon and the saloon-keeper's kitchen on the same floor, a violation of subdivision E of section 30 of the Liquor Tax Law is not established without some proof of actual communication between the saloon and the gambling-room through the means of communication offered by the physical condition of the premises. *Matter of Farley* (1911), 73 Misc. 551, N. Y. Supp.

An indictment, charging a violation by unlawfully selling liquors on Sunday in quantities less than five gallons at a time, is not demurrable on the sole ground

Code Civ. Pro. § 2323-a.

Application for administration.

L. 1912, ch. 98.

that it does not show whether or not the defendant had a liquor tax certificate. *People v. Parisi* (1911), 147 App. Div. 466, 131 N. Y. Supp. 182.

§ 35. Persons liable for violations of this chapter.

Sale on premises belonging to United States.—The State of New York has no power to punish offenses against the Liquor Tax Law committed on premises belonging to the United States to which jurisdiction has been ceded by the Legislature. *Farley v. Scherno* (1911), 147 App. Div. 375, 132 N. Y. Supp. 170.

§ 36. Penalties for violations of this chapter.

Subd. 1.—*People v. Parisi* (1911), 147 App. Div. 466, 131 N. Y. Supp. 182.

LONG ISLAND.

State School of Agriculture established; Education L., §§ 1185-1188.

LUNATICS.

Code of Civil Procedure.

§ 2323-a. Application when incompetent person is in a state institution; petition, by whom made; contents and proceedings upon presentation thereof.—Where an incompetent person has been committed to a state institution in any manner provided by law, and is an inmate thereof, the petition may be presented on behalf of the state by a state officer having special jurisdiction over the institution where the incompetent person is confined or the superintendent or acting superintendent of said institution; the petition must be in writing and verified by the affidavit of the petitioner or his attorney, to the effect that the matters therein stated are true to the best of his information or belief; it must show that the person for whose person or property, or both, a committee is asked has been legally committed to a state institution over which the petitioner has special jurisdiction, or of which he is superintendent or acting superintendent, and is at the time an inmate thereof; it must also state the institution in which he is an inmate, the date of his admission, his last known place of residence, the name and residence of the husband or wife, if any, of such person, if known to the petitioner, and if there be none known to the petitioner, the name and residence of the next of kin of such person living in this state so far as known to the petitioner; the nature, extent and income of his property, so far as the same is known to the petitioner, or can with reasonable diligence be ascertained by him. The petition may be presented to the supreme court at any special term thereof, held either in the judicial district in which such incompetent person last resided, or in the district in which the state institution in which he is committed is situated, or to a justice of the supreme court at chambers within such judicial district, or to the county court of the county in which the incompetent person resided at the time of such commitment, or

L. 1912, ch. 21.

Commission to investigate manufacture.

§ 3.

of the county in which said institution is situated. Notice of the presentation of such petition shall be personally given to such person, and also to the husband or wife, if known to the petitioner, or if none is known to the petitioner, to the next of kin named in the petition, and to the officer in charge of the institution in which such person is an inmate unless sufficient reasons for dispensing therewith are set forth in the petition or shown by affidavit. When notice is required, it may be given in any manner which the court deems proper. Upon the presentation of such petition, and proof of the service of such notice, the court or justice may, if satisfied of the truth of the facts required to be stated in such petition, immediately appoint a committee of the person or property, or both, of such incompetent person or may require any further proof which it or he may deem necessary before making such appointment. (*Amended by L. 1912, ch. 98, in effect Sept. 1, 1912.*),

MANUFACTURE.

L. 1911, ch. 561, § 3, amended by L. 1912, ch. 21, in effect Mch. 6, 1912, as follows:

§ 3. Such commission shall make a report of its proceedings, together with its recommendations, to the legislature on or before the fifteenth day of January, nineteen hundred and thirteen.

L. 1912, ch. 21, § 2.—In addition to the powers conferred by chapter five hundred and sixty-one of the laws of nineteen hundred and eleven, such commission shall, pursuant to such act, have power throughout the state to investigate manufacturing conducted in buildings or elsewhere, and to inquire into the conditions in mercantile establishments generally.

§ 3. The sum of sixty thousand dollars (\$60,000), or so much thereof as may be needed, is hereby appropriated for the actual and necessary expenses of the commission in carrying out the provisions of chapter five hundred and sixty-one of the laws of nineteen hundred and eleven and this act, payable by the treasurer on the warrant of the comptroller on the order of the chairman of such commission.

MARRIAGE.

By whom to be solemnized; Domestic Relations L., § 11. Licenses, issuance and form; Domestic Relations L., § 14.

MEMBERSHIP CORPORATIONS LAW.

(L. 1909, ch. 40.)

§ 7. Consolidation.

See *Matter of Creditor's Audit & Adjustment Assn.* (1911), 72 Misc. 461, 131 N. Y. Supp. 283.

§ 9. Members.

A voluntary association may provide in its constitution or by-laws for the expulsion of a member as a penalty for disobedience of its laws. *Nat. League of Commission Merchants v. Hornung* (1911), 148 App. Div. 355.

In order that there may be "cause" for the expulsion of a member of an incorporated club organized for social intercourse, there must be an offense against the member's duty as a corporator, or a serious breach of his duty as a citizen, or an offense against both duties. The act of the member must be improper and prejudicial to the club itself. The fact that a member of a social club composed of persons interested in the dramatic profession and the kindred arts of music, painting, sculpture and literature published a magazine article reflecting upon the intelligence of actors, but not directed especially towards members of the club, is not sufficient cause to justify his expulsion and his reinstatement will be compelled by mandamus. While such conduct might justify the club in refusing to admit the offender as a member in the first instance, no person having a legal right to become a member of a social club, it is not sufficient ground for his expulsion after he has once obtained membership. *Matter of Barry v. The Players* (1911), 147 App. Div. 704.

By-law providing for arbitration of disputes; submission by member to arbitration. —Irrespective of whether a membership corporation pursuant to a clause of its by-laws had a right to pass upon the financial claim of a non-member against a member, a member who voluntarily submits the claims against him to the arbitration committee of the corporation and takes two successive appeals from the decision against him, assents to the jurisdiction and cannot question it in a subsequent action brought to restrain him from using the corporation emblem in his business after his expulsion. The mere fact that a member of the arbitration committee which decided adversely to the defendant was also a member of the bodies before which the defendant successively appealed, does not show that the defendant was not given a fair trial, in the absence of proof of bias or animosity against him, or that said person was interested in the litigation or friendly to the claimant. Where a person becomes a member of an association and its charter provides a method for adjusting difficulties and settling conflicting demands he assents thereto, and cannot in the courts impeach a decision against him, in the absence of fraud, imposition or gross injustice, nor will the court examine the merits of the controversy. *Nat. League of Commission Merchants v. Hornung* (1911), 148 App. Div. 355.

§ 11. Powers, duties and liabilities of directors.

An indebtedness of a membership corporation for rent is not contracted within the meaning of this section when the lease is made but when the installments of rent come due. *Dunn v. Neustadt* (1911), 72 Misc. 1, 129 N. Y. Supp. 161.

§ 64. Directors.—The directors of a cemetery corporation shall be elected at its annual meetings, by ballot, by the persons entitled to vote thereat. If at any such meeting one-fifth of the owners of lots or plats shall not, in person or by proxy, vote thereat, the directors shall be chosen by the

existing directors, or a majority of them, unless such directors shall, at such meeting, be chosen by a majority of the votes of the owners of certificates of stock or indebtedness. The term of office of a director shall be three years.

A vacancy in the office of a director shall be filled by appointment, by the remaining directors, until the next annual meeting, when it shall be filled by election for the unexpired term. After the first annual meeting, no one but a lot owner shall be eligible to the office of director.

The directors may change their number to either six, nine, twelve or fifteen, by signing, acknowledging and filing a supplemental certificate stating the number of directors the corporation shall thereafter have; and thereafter there shall be elected at each annual meeting, one-third of the number of directors fixed by such certificate; but the directors then in office shall continue in office until the expiration of their term. In case any annual meeting of a cemetery corporation shall not be held on the day designated by the certificate of incorporation, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors. If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election in a newspaper published in the county where the election is to be held, and in such other manner as may be prescribed in the by-laws for the publishing of notice of the annual meeting, and by posting at least six printed or written, or partly printed and partly written, notices in six conspicuous places in the town or city in which such corporation has its principal place of business, at least two weeks before such meeting. The directors so elected at such special meeting to fill a vacancy caused by the expiration of a term of office shall be chosen for the full term of three years, except where the aggregate number of the directors so chosen shall exceed one-third of the whole number of directors, and in that event such directors shall be chosen in such manner that the term of office of one-third of the whole number of directors of such corporation shall expire at the time of holding each annual meeting thereafter.

That part of this section having reference to the calling of a special meeting by any member of the corporation for the purpose of electing directors, shall be construed to apply to the calling of all such special meetings for the purpose aforesaid hereafter arising on account of a failure to hold any annual meeting of such corporation on the day designated by the certificate of incorporation. No lot owner shall be entitled to vote at any such meeting unless prior thereto, all assessments against the lot of

such owner shall have been paid. (*Amended by L. 1912, ch. 301, in effect Apr. 15, 1912.*)

§ 72. **Taxation of lot owners by corporations.**—If the funds of a cemetery corporation, applicable to the improvement and care of its cemetery wholly outside of a city of the first or second class, or applicable to the construction of a receiving vault therein for the common use of lot owners, be insufficient for such purposes, the directors of the corporation, not oftener than once in any year and for such purposes only, may levy a tax on some basis to be determined by the directors of said corporation, but no such tax shall exceed two dollars on any one lot, except that with the written consent of two-thirds of the lot owners or by the vote of a majority of the lot owners present at an annual meeting, or at a special meeting duly called for such purpose, such tax may be for an amount which shall not exceed a total of five dollars per annum per lot, and the tax on any one lot shall not exceed five dollars per annum but the taxes may be levied upon each lot in the first instance for a sum sufficient for the improvement and care of the lot, but no greater sum than five dollars shall be collected in any one year. The whole tax levied may be collected in sums of five dollars in successive years in the manner herein provided. Notice of such tax shall be served on the lot owners or where two or more persons are owners of the same lot, on one of them, either personally, or by leaving it at his residence, with a person of mature age and discretion, or by mail, if he resides in a city, town or village where the office of the corporation is not located, or in case the residence or whereabouts of the owner can not be ascertained, by publication once a week for four successive weeks in a newspaper published in the town where such cemetery is located, or if no newspaper is published in such town then in some newspaper published in the county where such cemetery is located. If such tax remain unpaid for more than thirty days after the service of such notice, the president and secretary of the corporation may issue a warrant to the treasurer of the corporation, requiring him to collect such tax in the same manner as school collectors are required to collect school taxes; and such treasurer shall have the same power and be subject to the same liabilities in executing such warrant as a collector of school taxes has or is subject to by law in executing a warrant for the collection of school taxes. If the taxes so levied remain unpaid for five years after the levying of such tax the amount thereof with interest shall be a lien on the unused portion of the lot which is subject to such tax, and no portion of the lot so taxed shall be used by the owner thereof for burial purposes, while any such tax remains unpaid. If at the expiration of five years from the date of the service of the first notice of assessment as herein provided, any such assessment or the interest thereon shall remain unpaid, the corporation may sell the unused portion of such lot at public auction upon the cemetery grounds, in the following manner: If the person owning such lot resides within the state, a written notice, under the

seal of such cemetery association, if it have a seal, and the hand of the president or secretary thereof, stating the amount of such tax or taxes unpaid and that such unused portion of such lot will be sold at a time therein to be specified, not less than twenty days from the date of the service of such notice, shall be personally served upon such owner; if such owner is not a resident of the state, or if the place of his residence can not with due diligence be ascertained, or if, for any other reason satisfactory to the court, personal service cannot with due diligence be made upon such owner, such cemetery association, or any of its officers, may present a duly verified petition stating the facts to the county court of the county in which such cemetery lands are situated, or to the supreme court, and such court may upon satisfactory proof, by its order, direct the service of such notice in the manner provided by the code of civil procedure, for the substituted service of a summons. The president or secretary of such association, or any suitable and proper person appointed by such association or by the court, may upon filing proof of publication and service of such notice as provided by section four hundred and forty-four of the code of civil procedure make such sale, and the same may be adjourned from time to time for the accommodation of the parties or for other proper reasons. Previous notice of such sale shall be posted at the main entrance of the cemetery. Prior to such sale such corporation shall cause such lot to be resurveyed and replatted showing the part thereof not used for burial purposes and only such unused portion shall be sold. The cemetery corporation may at any such sale under this chapter purchase any such lots or parts of lots. The surplus remaining after paying all assessments, interest, cost and charges shall be set aside by said corporation, as a fund for the care and improvement of that portion of such lot that has been used for burial purposes. In case the proceeds of such sale shall amount to more than thirty dollars the person making such sale shall make his report, under oath, to the court, of proceedings had and shall state the amount for which such lot was sold and that such lot was sold to the highest responsible bidder, together with the names of the purchasers, and the court may and in a proper case shall, by order, confirm such sale; in all other cases the person making such sale shall file in the office of the county clerk of the county in which such cemetery lands are situated a like report duly verified, and on the filing of such order of confirmation or such report, as the case may be, the title to the use of such unoccupied portion of such lot shall vest in the purchaser thereof.

The directors of any such association may make a contract with a lot owner which shall provide for the payment by him of an agreed gross sum in lieu of further taxes and assessments and that upon the payment of such gross sum the lot of such owner shall be thereafter exempt from taxes and assessments. (*Amended by L. 1912, ch. 301, in effect Apr. 15, 1912.*)

§ 85. **Record of inscriptions to be filed.**—Whenever, under any general or

§ 85.

Cemeteries; care of lots.

L. 1912, chs. 151, 315.

special law, any cemetery is abandoned or is taken for a public use, the town board of the town in which such cemetery is located, shall cause to be made, at the time of the removal of the bodies interred therein, an exact and accurate copy of all inscriptions on each headstone, monument, slab or marker erected on each lot or plot in such cemetery and shall cause the same to be duly certified and shall file one copy thereof in the office of the town or city clerk of the town or city in which such cemetery was located and one copy in the office of the state historian and chief of the division of history in the department of education at Albany. In addition to such inscriptions, such certificate shall state the name and location of the cemetery so abandoned or taken for a public use, the cemetery in which each such body was so interred and the disposition of each such headstone, monument, slab or marker. (*Added by L. 1912, ch. 151, in effect Apr. 4, 1912.*)

§ 85. **Perpetual care of lots.**—Every corporation organized under or subject to the provisions of this article shall adopt a reasonable and uniform scale of prices to be charged for the perpetual care of all lots in such cemetery, which shall be separate from and in addition to the amount fixed as the price at which such lots will be sold and conveyed, and upon the application of a prospective purchaser of any such lot and upon the payment by such purchaser of the purchase price and the amount fixed as a reasonable charge for the perpetual care of such lot, as herein provided, shall include in the deed of conveyance an agreement to perpetually care for such lot. Such corporation shall also, upon the application of an owner of any lot and upon the payment of the amount fixed as a reasonable charge for the perpetual care of such lot, enter into an agreement with such owner to perpetually care for such lot. Such agreement shall be executed in the same manner as a deed is required to be executed and may be recorded as a deed of real property in the office of the clerk of the county in which such cemetery is located. On and after entering into such contract with such purchaser or owner it shall be the duty of such corporation at all times thereafter to properly care for such lot. (*Added by L. 1912, ch. 315, in effect Apr. 15, 1912.*)

MEMORIAL DAY.

Appropriations for, in towns; Town L., § 136a.

MILITARY LAW.

(L. 1909, ch. 41.)

§ 95. **Enlistments.**—An able-bodied man of good character, who can read and write and who is a citizen of the United States or has declared his intention to become such may be enlisted in the national guard or naval militia of this state for a term of not less than three years; but may continue to serve under his enlistment after the expiration of such term until discharged as hereinafter provided. Chief and principal musicians, privates of the hospital corps, musicians, machinists and electricians of all ratings in the naval militia, may be enlisted as such. No man shall be enlisted who holds a commission in the militia of this state. No man shall be enlisted who is forty-five years and more of age, or less than eighteen years old, except that men who are sixteen years and more of age may be enlisted as musicians. No minor shall be enlisted without the written consent of his parent or guardian. A man who has been dropped because he cannot be found or expelled or dishonorably discharged, or discharged without honor, from any military or naval organization of the state shall not be eligible for enlistment or re-enlistment unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was dropped or expelled or dishonorably discharged, or discharged without honor, and of the commanding officer who approved such expulsion or issued such discharge or upon whose order he was dropped. Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disability shall if such disability ceases, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. (*Amended by L. 1909, ch. 369; L. 1911, ch. 100 and L. 1912, ch. 68, in effect Mch. 25, 1912.*)

§ 101. **Taking up from dropped.**—An enlisted man dropped by reason of removal may be taken up at any time within three years after such removal, in his former or any other organization, obtaining in the latter case first the written permission of the commanding officer of the company in which he served when dropped, approved by the officer, or any successor in office to the officer upon whose order he was dropped. An enlisted man dropped for removal may be taken up at any time after three years after such removal, upon his own application, approved by the officer upon whose order he was dropped. The taking up shall be done under the orders of any officer who is authorized to order the dropping of men; and men thus taken up shall receive credit for the time served before having been dropped. An enlisted man taken up from dropped shall not be taken up on any report, return or roll or permitted to do duty until he has

passed the physical examination required upon enlistment. The order under which he is taken up shall fix a time and place for such examination and if he neglect or refuse to attend or to be examined at that time and place or at any time and place to which the examination may be postponed he shall be discharged without honor; if he fail to pass the required examination he shall be discharged for physical disability. An enlisted man dropped because he cannot be found cannot be taken up and the time he has served shall not be allowed or credited to him. (*Amended by L. 1909, ch. 369 and L. 1912, ch. 161, in effect Apr. 5, 1912.*)

§ 103. **Discharges.**—An enlisted man discharged from service shall receive a discharge in writing.

A full and honorable discharge shall be issued to an enlisted man who has performed in each year of a full term of enlistment or re-enlistment and in each year and part of a year of his service thereafter, at least seventy per centum of all ordered duty and who has returned or been lawfully relieved from responsibility for all public property for which he is responsible. An enlisted man who fails to perform seventy per centum of all ordered duty during any year of his service may in the discretion of his commanding officer continue in service and become qualified for such discharge by making up such deficiency as follows: The number of drills or days of ordered duty which he failed or omitted to make in each year or in any less period than a year of his service but should have performed in that year or period to make up seventy per centum of all ordered duty therein shall be computed and the total of these deficiencies in all his service shall be ascertained, and he must perform eighty per centum of all ordered duty in each year or part of a year he continues in the service, including and counting as part of that percentage the drills or duties equal in number to the aforesaid total of deficiencies in all his service. In the computation of percentages fractions under one-half shall be disregarded and fractions above one-half shall be counted a unit.

The word "year" as used in this section shall mean twelve calendar months beginning on the date on which the enlisted man took the oath of enlistment or re-enlistment.

An honorable discharge shall be issued to an enlisted man who has returned or has been lawfully relieved from responsibility for all public property for which he is responsible and whose service has been honest and faithful.

When he has served a full term of enlistment or re-enlistment and is not entitled to a full and honorable discharge; or

When he is discharged at his own request and is not entitled to a full and honorable discharge; or

When he is rendered surplus by the reduction or disbandment of an organization and is not entitled to a full and honorable discharge; or

When he is discharged for physical disability not caused by his own neglect or misconduct.

A dishonorable discharge shall be issued to an enlisted man :

In execution of a sentence of a general court-martial; or for failure to pay a fine imposed by a military or naval court within thirty days after its imposition; or

Upon expulsion from an association organized pursuant to this chapter in accordance with by-laws lawfully adopted.

A discharge without honor shall be issued to an enlisted man :

When his service has not been honest and faithful; or

When his discharge is for physical disability caused by his own neglect or misconduct; or

When he is discharged on his own request and is not entitled to a full and honorable or an honorable discharge; or

When he is convicted of a felony by a civil court of this or any other state or of the United States; or

When he is discharged for the good of the service; or

When this form of discharge is specially authorized by a provision of this chapter.

When a discharge without honor is to be issued to an enlisted man the officer under whose immediate command the enlisted man is serving shall apply in writing to the officer authorized to issue the discharge, briefly stating the grounds upon which the discharge is applied for. Except where the ground for the application is a conviction for felony a copy of the application and a notice of the time and place when it will be considered by the officer authorized to issue the discharge shall be served upon the enlisted man at least ten days before such time of hearing in the same manner as warnings for duty are given and the enlisted man shall be entitled to appear and shall be allowed an opportunity of making an explanation in person. In the case of a conviction of a felony a certified copy of the conviction shall be presented to the officer authorized to issue the discharge and shall be sufficient to authorize his action without notice to the enlisted man.

The discharge provided for in this section shall be issued by the officer authorized to approve an enlistment of the enlisted man discharged, except in the case of post noncommissioned staff officers, when they shall be issued by the major-general and except in cases where provision is otherwise made in this chapter.

When an enlisted man, continued in service after the expiration of his term of enlistment or re-enlistment, desires a discharge he shall give fifteen days' notice in writing of application therefor to the officer authorized to issue the same, who may issue the discharge forthwith or in his discretion withhold it until the expiration of said period of fifteen days.

An enlisted man shall be held for service until his discharge is issued and delivered.

If at the time an enlisted man applies for his discharge or becomes entitled thereto he is under charges or returned to a military court for trial

§§ 168, 182, 183.

Armories in N. Y. City.

L. 1912, chs. 67, 165.

for unpaid dues or fines of an association formed under this chapter or for a military offense, in either event no discharge shall be issued until the charges or return of dues, fines or offenses has been heard and determined by a military court nor, if he be fined, until thirty days after the fine was imposed, unless the fine be sooner paid; and the discharge when issued shall be such as shall be appropriate to the enlisted man's service and record up to that time. (*Amended by L. 1912, ch. 161, in effect Apr. 5, 1912.*)

§ 168. **Full-dress uniform.**—Any command may, with the consent of the governor, adopt a full-dress uniform of its own and at its own expense. To such command such portions of the state uniform may be issued as the governor may direct. A squadron of cavalry which has adopted a full-dress uniform of its own under this section shall have the right to continue its use upon becoming part of a regiment. (*Amended by L. 1912, ch. 67, in effect Mch. 25, 1912.*)

§ 182. **Expenses of erecting, improving and furnishing armories.**

Audit of bills for maintenance of armories.—Bills incurred in the maintenance of armories, pursuant to the provisions of this section, are not subject to the audit of the board of supervisors but are to be paid as and when audited by the officer making the requisition and the county treasurer or other fiscal officer of the county having custody of the fund to be disbursed therefor. Rept. of Atty. Genl., Jan. 31, 1912.

§ 183. **Armories in the city of New York.**—In the city of New York the applications of commanding officers of regiments, battalions, squadrons, troops, batteries, field hospitals, ambulance companies, companies of signal corps, the colonel of the corps of engineers or the ranking officer of the coast artillery commanding an artillery district located in said city, for suitable armories and for the furnishing thereof when first erected, and for alterations and enlargements of armories and the applications of the major-general, commanding officer of the naval militia, an officer commanding a brigade or an officer commanding a battalion composed of separate troops, batteries or companies therein, for suitable accommodation for brigade or other headquarters, shall be made to a board herein termed the armory board, and to consist of the mayor, the comptroller, the president of the board of aldermen, the two senior ranking officers of or below the grade of brigadier-general, in command of troops of the national guard quartered in said city, the commanding officer of the naval militia and the president of the department of taxes and assessments. If the armory board approve such an application, it shall make its recommendation to the commissioners of the sinking fund, who, if they concur therein, shall specify the sums to be appropriated therefor, and such sums shall be included by the comptroller of said city in his departmental estimates for the ensuing year, and the board of estimate and apportionment and the board of aldermen are hereby directed to include such sums in the budget for the ensuing year; or the commissioners of the sinking fund may, from time to time,

in their discretion authorize and direct the comptroller of the city to issue corporate stock of the city in such amounts as shall be necessary to provide such sums or any part thereof, and the mayor and comptroller of the city are authorized and directed to sign such stock, which shall be redeemable in not more than fifty years from the date of issue, and shall bear interest at such rate as the board of commissioners of the sinking fund may prescribe. It shall be the duty of the city clerk to attest such stock and seal the same with the common seal of the city, and the board of estimate and apportionment and the board of aldermen are hereby authorized and directed to cause to be raised upon the property, subject to taxation in the city of New York, such sums of money as may be required to pay the interest on such stock and redeem the same at maturity. The work necessary to be done and the materials necessary to be furnished for erecting armories, and for the furnishing thereof when first erected, and for alterations and enlargements of armories, as in this section above provided, shall be done and furnished respectively under the direction and supervision of the armory board, under contracts made at public letting pursuant to the general provisions of law as to public contracts in the city of New York. The comptroller is authorized and required to pay, on the requisition of the armory board, the amount certified by it, from time to time to be due in such manner as he shall direct, and the amount of any appropriation or bond issue shall not be exceeded in incurring expenditures under this section. The commissioners of the sinking fund may also, in their discretion, appropriate any plot or plots of land belonging to the city and not already appropriated to some other public use, as locations on which armory buildings may be erected. The title to property acquired under this section through the approval of the commissioners of the sinking fund shall be vested in the corporation of the city of New York. All repairs to, and, except as above provided, all furnishing of, armories in the city of New York, shall be done by said city, and all utensils, materials and supplies certified by the auditing board of an organization, corps or artillery district quartered therein to be necessary for the cleaning, care and preservation of the portion of the armory used or occupied by said organization, corps or artillery district, or of the arms, uniforms, equipments and furniture used or kept by said organization, corps or artillery district, in such armory, shall be supplied by said city, as hereinafter in this section provided. The commanding officer of each organization, corps or artillery district of the active militia quartered in the city of New York, and the secretary of the armory board, shall, before the first day of September in each year, prepare and submit to the armory board an itemized estimate of the necessary expenditures to be made during the ensuing year for repairs to and furnishing of armories and utensils, materials and supplies to be furnished by said city, and for administration by the armory board. On or before the twentieth day of September in each year, the armory board shall revise said estimates of the commanding officers and

of the secretary of the armory board and determine the amount necessary to be expended for the purposes aforesaid in the ensuing year. Such determination shall be made in detail, specifying as separate items the amounts to be expended on each armory and for each organization, corps or artillery district, for repairs, furnishing, utensils, supplies and other expenditures to be made by said city, and for administration by the armory board, and said board shall thereupon, and before October first, certify the amounts so fixed, and determined in detail by said board to the board of estimate and apportionment, and the said board of estimate and apportionment and the board of aldermen shall include said amounts as determined in detail, as aforesaid, in the final budget for the ensuing year. The amounts so appropriated shall be expended on the armories and for the organizations, corps or artillery districts and for the administration by the armory board, for which the same were respectively appropriated by and under the direction of the armory board, which shall, from time to time, as may be necessary, advertise in the city record and the corporation newspapers for not less than ten days for all utensils, supplies, work, labor and materials, and shall award contracts for the same to the lowest bidders, who shall give adequate security for the faithful performance of such contracts, except that in case of an emergency said board may cause repairs, utensils, supplies, work, labor and materials immediately required to be done or furnished without calling for competition at an expense not exceeding one thousand dollars in any one instance. No payment shall be made by the comptroller from the appropriation aforesaid, except as follows: In the case of supplies upon the written approval of the claim by the commanding officer of the organization, corps or artillery district, or the colonel of the corps of engineers receiving the supplies, and in case of expenditures upon an armory for whatsoever purpose made, upon like approval by the ranking line officer commanding an organization, corps or artillery district quartered therein. (*Amended by L. 1912, ch. 165, in effect Apr. 5, 1912.*)

§ 185. Acquisition of sites and additional lands for armories by boards of supervisors.—The board of supervisors of any county in which any state armory is now to be built or is hereafter required to be erected for the use of the active militia in such county, are authorized to purchase a suitable site for the erection of such armory, to be approved by the armory commission, the title to which shall be taken in the name of and be vested in the people of this state. The board of supervisors of any county in which any state armory now is may purchase such lands adjoining the site of such armory as the armory commission may deem proper; a description of such lands shall be filed by the armory commission with the board of supervisors of such county, and the title thereto shall be taken in the name of and be vested in the people of this state. If such board is unable to agree for the purchase of such site or for the purchase

of such lands adjoining an armory site required to be purchased as herein provided, with the owners thereof, the chairman of such board shall acquire title to such property in the name of the people of the state under the condemnation law, and such board, when notified by its chairman that any land has been purchased or acquired pursuant to law, shall appropriate such sums as shall be necessary for the payment of the purchase price or cost of such property, together with the cost of acquiring the title thereto, and for the grading, filling, excavating, draining, paving streets, flagging sidewalks, fencing such property, providing sewer connections and the furnishing and equipping of the armory when built, which shall be county charges. The board of supervisors may, by resolution, authorize the issuance and sale of bonds of the county for paying the purchase price or cost of such property, together with the cost of acquiring the title thereto.

Whenever any real property is taken for the purpose of erecting a state armory thereon, the buildings on such property or the old materials in the same, may be sold at public or private sale for the best price that can be obtained, and if the property is taken by the state the net sum realized therefrom shall be paid into the state treasury, and if taken by a county, to a county treasurer of said county, or it may be used for the improvement of the property taken by the authorities authorized to erect such armory.

This section shall not apply to or affect that portion of the several counties lying within the boundaries of the city of New York. (*Amended by L. 1912, ch. 296, in effect Apr. 12, 1912.*)

The appointment of an armorer under this section is invalid unless approved by the certificate of the major-general or commanding officer of the brigade within whose command the armory is located. *Matter of Gibbons v. Prendergast* (1912), 75 Misc. 512.

§ 210. Pay.—Each officer and enlisted man ordered for duty by the governor or under his authority by the major-general or the commanding officer of the naval militia shall receive the pay herein specified for every day actually on duty except when so ordered for inspection, muster, small arms practice, parade or review or field service not extending beyond one day; a private or a second-class private, a musician or a trumpeter, one dollar and twenty-five cents; a first class private or wagoner, one dollar and thirty-five cents; a corporal, an artificer, a farrier, a blacksmith, a saddler, a fireman of coast artillery, one dollar and forty cents; a color sergeant, a sergeant, a cook, a mechanic, a stable sergeant, an electrician sergeant second class, master gunner, one dollar and sixty cents; a first sergeant, a first class sergeant, a drum major, a chief or principal musician, an ordnance sergeant, a post or regimental commissary sergeant, a post, regimental, battalion or company quartermaster sergeant, a regimental or battalion or squadron sergeant major, sergeant major senior or junior grade, coast artillery, a sergeant of signal corps, an electrician

sergeant first class, an engineer coast artillery, a chief trumpeter, two dollars; a first class sergeant signal corps, a master signal electrician, a master electrician, a chief mechanic, two dollars and twenty-five cents. Classified and rated enlisted men shall receive such extra daily allowance as may be fixed by the governor. A non-commissioned officer performing the duties of a grade higher than his own shall receive the pay of such higher grade; a private acting as a non-commissioned officer shall receive the pay of the grade in which he is acting; each enlisted man who has served a full term of enlistment shall be entitled to additional pay at the rate of twenty-five cents per day during the second five years of his service and a further addition of twenty-five cents per day for each succeeding five years of service; men of the naval militia shall be paid according to their assimilated grade with those of the land forces herein set forth. All commissioned officers shall be entitled to and shall receive the same pay and allowances as commissioned officers of the army or navy of the United States of equal grade and term of service. A veterinarian shall receive the pay and allowances of a second lieutenant of cavalry. Each officer and enlisted man mounted and equipped shall be paid a reasonable compensation per day for each horse actually used by him. (*Amended by L. 1909, ch. 308 and L. 1912, ch. 278, in effect Apr. 11, 1912.*)

§ 216. Allowances for military organizations; military fund.—On the certificate of the adjutant-general of the state the comptroller shall annually draw his warrant in favor of each county treasurer specified in such certificate, for the organizations of the active militia mentioned therein as follows: seven hundred and fifty dollars for each headquarters of a field artillery battalion; twenty-five hundred dollars for each battery; fifteen hundred dollars for each troop, and one thousand dollars for each company of signal corps, field hospital, and ambulance company, to be expended for mounted drills and parades, and for the feed and shoeing of horses in the service of the state; two hundred and fifty dollars for each company of signal corps, field hospital, ambulance company, separate troop, battery, company or division; and for each regiment, battalion and squadron not part of a regiment, company of signal corps, field hospital, ambulance company, separate troop, battery, company and division, for the purpose of defraying other necessary military expenses, a sum equal to one dollar and sixty cents for each of its enlisted men present for duty at each of five of the compulsory drills or parades required in this chapter, which sums, together with the fines and penalties collected from delinquent enlisted men, shall constitute the military fund of such regiment, battalion or squadron not part of a regiment, company of signal corps, field hospital, ambulance company, separate troop, battery, company or division. For the purposes of allowances granted in this section the corps of engineers and the officers and enlisted men of the coast artillery corps *serviing in

* So in original.

an artillery district shall each be considered a regiment and enlisted men of any corps or department attached to or assigned to duty with any organization, corps or artillery district shall be considered as enlisted men of such organization, corps or artillery district. Squadrons not part of a regiment if organized into a regiment and separate troops, batteries, companies and divisions, if organized into squadrons, battalions or regiments, shall thereby not be deprived of the allowances granted each in this section. Muster and inspection when ordered shall be counted as one of the five compulsory parades required to obtain the annual allowance. (*Amended by L. 1911, ch. 101 and L. 1912, ch. 56, in effect Mch. 21, 1912.*)

§ 217. Audit and expenditure of funds.—The funds allowed under the preceding section shall be expended for the benefit of the command to which the same are allowed upon the approval and audit of an auditing board constituted as follows:

a. In regiments and battalions and squadrons the three ranking line officers.

b. In the corps of engineers the three ranking officers of the corps serving with the engineer troops.

c. In the coast artillery corps the three ranking officers of the corps in each artillery district.

d. In batteries, separate troops and separate companies the line officers of the organization.

e. In companies of signal corps the officers of the corps on duty with the company.

f. In field hospitals and ambulance companies the officers of the medical corps on duty therewith.

g. In the naval militia the commanding officer and the two line officers highest in rank in the organization.

The auditing board shall draw an order on the proper county treasurer for the payment of each just claim allowed by it, but such order shall not be paid by the county treasurer until after the vouchers in support of such claim shall have been approved by the major-general for organizations or corps attached to the division, by the commanding officer of a brigade for an organization attached to such brigade, by the commanding officer of the naval militia for organizations of the naval militia as the case may be and by the adjutant-general of the state. When by reason of a vacancy or vacancies in office or of relief from duty or absence on leave of an officer or officers of an organization a quorum of qualified officers cannot be obtained for its auditing board as constituted by this section, officers detailed to discharge the duties of the vacant offices or relieved or absent officers may act as members of the auditing board to the extent needed to form a quorum thereof, with the same authority as duly qualified members of the organization would have if present. (*Amended by L. 1909, ch. 307, and L. 1912, ch. 56, in effect Mch. 22, 1912.*)

§§ 218, 223.

Allowances for headquarters; disabled soldiers.

L. 1912, ch. 56.

§ 218. **Allowances for headquarters.**—On the certificate of the adjutant-general of the state, the comptroller shall, annually, draw his warrant upon the treasurer for the following sums, namely: twelve hundred dollars for the headquarters of the naval militia, for the chief of coast artillery, and for each brigade headquarters; fifteen hundred dollars for each regimental headquarters; five hundred dollars for each battalion and squadron headquarters, one hundred dollars additional to naval battalions for each signal division and two hundred and fifty dollars for each engineer division contained therein. For brigade headquarters in brigades covering a territory of more than ten counties, five hundred dollars, and in brigades whose organizations are located in fifteen or more counties, eight hundred dollars additional shall be allowed. For the headquarters of each regiment whose organizations are located in more than four counties, an additional one hundred dollars shall be allowed for each county in excess of four, in which a company organization of such regiment is stationed. For the headquarters of each separate battalion whose organizations are located in more than two counties, an additional one hundred dollars shall be allowed for each county in excess of two, in which a company organization of such battalion is stationed. For the corps of engineers fifteen hundred dollars, for each artillery district containing eight or more companies fifteen hundred dollars, for each artillery district containing less than eight and more than four companies one thousand dollars, for each artillery district containing four companies five hundred dollars, the funds thus allowed shall only be expended by the respective commanding officers, the colonel of the corps of engineers and the ranking officer commanding the artillery district to which the fund is allowed on the approval of the adjutant-general of the state. Squadrons not part of a regiment if organized into a regiment shall thereby not be deprived of the allowances granted in this section. (*Amended by L. 1911, ch. 101, and L. 1912, ch. 56, in effect Mch. 22, 1912.*)

§ 223. **Pay and care when injured or disabled in service.**—A member of the national guard or naval militia who shall, when on duty or assembled therefor, in case of riot, tumult, breach of peace, insurrection or invasion, or whenever ordered by the governor, the major-general, or the commanding officer of the naval militia, or called in aid of civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall, during the period of such incapacity, receive the pay provided by this chapter and actual necessary expenses for care and medical attendance. Where a claim is made under this section the adjutant-general of the state may cause examinations of the claimant to be made from time to time by a medical officer or officers designated for

the purpose by the adjutant-general of the state, and he may direct the removal of a claimant to, and his treatment in, an hospital designated by the adjutant-general of the state, and if the claimant refuse to permit any such examination or if he refuse to go to such hospital or to follow the advice given or treatment prescribed for him therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section. Under this chapter no disability shall be considered temporary which continues for more than ninety days from the date of receiving the injury or of incurring or contracting the disease or disability, and pay and expenses for care and medical attendance for more than the said ninety days shall not be allowed. All claims arising under this section shall be inquired into by a medical examiner or by a board of three officers, at least one being a medical officer, to be appointed by the adjutant-general of the state, upon the application of the member claiming to be so incapacitated. Such medical examiner or board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. The findings of the medical examiner or board shall be subject to the approval of the adjutant-general of the state, who may return the proceedings of the medical examiner or board for revision and for taking further testimony. The amount found due such member by said medical examiner or board to the extent that the findings are approved by the adjutant-general of the state, shall be a charge against and be paid in the manner provided by this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid. (*Amended by L. 1912, ch. 174, in effect Apr. 5, 1912.*)

§ 241. **Military parades and organization by unauthorized bodies prohibited.**—No body of men, other than the active militia and the troops of the United States except such independent military organizations as were on the twenty-third day of April, eighteen hundred and eighty-three, and now are, in existence, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state. No body of men shall be granted a certificate of incorporation under any corporate name which shall mislead, or tend to mislead, any person into believing that such corporation is connected with or attached to the National Guard of this state in any capacity or way whatsoever. In case any such certificate has been heretofore or may hereafter be granted, which in the judgment of the adjutant-general of the state, misleads or tends to mislead anyone into believing that such corporation is connected with or attached to the National Guard in any capacity or way whatsoever, the adjutant-general of the state shall notify

such corporation, in writing, to forthwith discontinue the use of its said corporate name and forthwith take the necessary steps to change its name pursuant to the statute in such case made and provided, to some name not so calculated to mislead. In the event such proceedings are not forthwith taken and completed within six months from the service of said notice, the attorney-general is authorized and directed to bring an action to procure a judgment vacating or annulling the act of incorporation of such corporation, or any act renewing the corporation or continuing its corporate existence or annulling the existence of such corporation. No city or town shall raise or appropriate any money toward arming or equipping, uniforming or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States, or members of the order of Sons of Veterans, may parade in public with firearms on Decoration day, or on May first, known as Dewey day, or upon the reception of any regiments or companies of soldiers returning from such service, and for the purpose of escort duty at the burial of deceased soldiers, and students in educational institutions where military science is a prescribed part of the course of instruction, and cadet organizations composed of youths under eighteen years of age, under responsible instructors, may, with the consent of the governor, drill and parade with firearms in public under the superintendence of their instructors. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the National Guard or naval militia of any other state. The independent military organizations mentioned in this section, not regularly organized as organizations of the National Guard, are hereby made subject to the orders of the governor in case of emergency or necessity, to aid the National Guard in quelling invasion, insurrection, riot or breach of the peace provided the officers and members of such organization shall, when so called upon, first sign and execute and deliver through their commanding officer to the officer to whom it is ordered to report, a form of enlistment in form to be prescribed by the governor in regulations or orders for a term not less than thirty days nor more than ninety days at one time; and if the service of such organization shall not be required for the full term of their enlistment they shall be discharged by the order of the governor. All members of such independent organizations when called into service of the state, as herein provided for, shall be equipped and paid by the state, and shall be protected in the discharge of their duties, and in obeying the orders of the governor, as though a part of the National Guard of the state. Any person violating any provision of this section shall be deemed guilty of a misdemeanor. (*Amended by L. 1911, ch. 210, and L. 1912, ch. 69, in effect Mch. 25, 1912.*)

MISDEMEANANTS.

See State Reformatory.

MONUMENTS.

L. 1912, ch. 489.—An act to provide for the dedication of the Saratoga battle monument, the appointment of a commission, prescribing its powers and duties, and making an appropriation therefor. (*In effect Apr. 18, 1912.*)

§ 1. **Commission.**—The governor shall appoint one citizen of this state, the president pro tempore of the senate shall appoint a member of the senate, and the speaker of the assembly shall appoint a member of the assembly, who shall constitute and be known as the Saratoga battle monument dedication commission. The members of such commission shall serve without pay, but shall receive their actual and necessary traveling and other expenses in the performance of their official duties.

§ 2. **Objects.**—The object of such commission shall be to plan and conduct a public dedication of the Saratoga battle monument, erected to commemorate the surrender of Burgoyne's army in the war of the revolution, which dedication shall take place in the month of October, nineteen hundred and twelve, being the one hundred and thirty-fifth anniversary of such surrender.

§ 3. **Organization; assistants.**—Such commission shall organize by electing such officers from its membership as it may deem necessary and may adopt such rules and regulations as it may deem proper for carrying into effect the purposes for which it is created. It may employ such assistants as it may deem necessary, fix their compensation and confine their powers and duties within the provisions of any appropriation made for such commission.

§ 4. **Payment of moneys; records; report.**—Moneys appropriated for the commission shall be paid by the treasurer on warrant of the comptroller issued upon a requisition, signed by the president and secretary of the commission, accompanied by an estimate of the expenses for the payment of which the money so drawn is to be applied, and vouchers for such expenditures shall be filed with the comptroller, who shall audit the same. The commission shall keep an accurate record of its proceedings and transactions, and shall submit to the legislature of nineteen hundred and thirteen a full and complete report thereof. Within thirty days thereafter, the commission shall make a verified report to the comptroller of the disbursements made by it, and return to the comptroller the unexpended balance of moneys drawn in pursuance of this act. It shall have no power or authority to contract for the expenditure of any sum in excess of the amount herein appropriated, except such funds as have actually been paid

Code Civ. Pro. §§ 1627, 2396.

Foreclosure.

L. 1912, ch. 388.

into its treasury by public or private contribution for the purposes for which this commission is created, and it shall keep an accurate account of the receipts and disbursements of such contributions, if any, and include the same in its report to the legislature.

§ 5. **Appropriation.**—The sum of twenty-five hundred dollars (\$2,500), or so much thereof as shall be necessary, is hereby appropriated for the purposes mentioned in this act.

MORRISVILLE.

School of Agriculture; Education L., § 1094.

MORTGAGES.

Code of Civil Procedure.

§ 1627. Parties to foreclosure action.

3. In all cases where, prior to September first, nineteen hundred and eight, the attorney-general shall have appeared in behalf of the people of this state, in an action for the foreclosure of a mortgage, such appearance shall be as valid and effectual as though chapter two hundred and eighty-four of the laws of nineteen hundred and eight had been in force at the time of such appearance, whether such actions were pending or concluded when such chapter took effect, anything in such chapter to the contrary notwithstanding, provided, however, that nothing herein contained shall affect the right or title of any person claiming such real property under letters patent issued by the people of the state, for a valuable consideration before this act shall take effect. (*Subd. added by L. 1912, ch. 388, in effect Sept. 1, 1912.*)

§ 2396. **Affidavit of sale, and of posting, serving, et cetera, notice.**—An affidavit of the sale, stating the time when, and the place where, the sale was made; the sum bid for each distinct parcel, separately sold; the name of the purchaser of each distinct parcel; and the name of the person or persons, court officer or other officer, to whom the proceeds of the sale were paid, and the sums thereof must be made by the person who officiated as auctioneer upon the sale. An affidavit of the publication of the notice of sale, and of the notice or notices of postponement, if any, may be made by the publisher or printer of the newspaper in which they were published, or by his foreman or principal clerk. An affidavit of the affixing of a copy of the notice, at or near the entrance of the proper court house, may be made by the person who so affixed it, or by any person who saw it so affixed, at least eighty-four days before the day of sale. An affidavit of the affixing of a copy of the notice in the book, kept by the county clerk, may be made by the county clerk, or by any person who saw it so affixed, at least eighty-four days before the day of sale. An affidavit of the service

L. 1912, ch. 66.

Definition and form of order.

Code Civ. Pro. § 767.

of a copy of the notice upon the mortgagor, or upon any other person, upon whom the notice must or may be served, may be made by the person who made the service. Where two or more distinct parcels are sold to different purchasers, separate affidavits may be made with respect to each parcel, or one set of affidavits may be made for all the parcels. (*Amended by L. 1912, ch. 343, in effect Sept. 1, 1912.*)

MOTIONS AND ORDERS.

Code of Civil Procedure.

§ 767. **Definition and form of an order.**—A direction of a court or judge, made, as prescribed in this act, in an action or special proceeding, must be in writing, unless otherwise specified in the particular case. Such a direction, unless it is contained in a judgment, is an order. In determining a motion, the court shall cause its determination, together with a recital of the papers read on the motion on either side to be indorsed on or appended to the back of the motion papers and shall sign the same and such indorsement and signature shall constitute the order of the court; but nothing herein contained shall prevent the court, upon the application of either party, from resettling such order in the form of the written order heretofore in use. Upon such resettlement of the order, where the right to appeal depends upon whether or not such order was made in the exercise of discretion, or whether or not the decision upon which it is based involves a question of law, such order shall so state the ground upon which it was made. (*Amended by L. 1912, ch. 66, in effect Sept. 1, 1912.*)

NEGOTIABLE INSTRUMENTS LAW.

(L. 1909, ch. 43.)

§ 20. Form of negotiable instrument.

Negotiable instrument; what constitutes.—An instrument by which the maker acknowledges the receipt from a third person of a policy of insurance and authorizes and requests the person to whom the instrument is directed to place the policy in force and promises to pay to him, or to his order, the first annual premium amounting to the sum stated in the instrument, is a negotiable instrument; and it is no defense to an action thereon that the defendant has not in fact received the policy mentioned therein. In an action on such an instrument, only the amount stated therein to be payable at a future fixed time is recoverable; and the holder cannot recover any sum mentioned therein which the instrument states is paid upon the date thereof by a check at that time enclosed to the person to whom the instrument is directed and delivered. *Equitable Trust Co. of N. Y. v. Were* (1911), 74 Misc. 469, 132 N. Y. Supp. 351.

Unconditional promise to pay.—An instrument by which the person named as the assured in a policy of life insurance requests the general agent of the company to pay the first premium and promises to pay him the amount thereof is not an absolute promise to pay at all events and, therefore, it is not a negotiable instrument. *Equitable Trust Co. v. Howe* (1911), 72 Misc. 46, 129 N. Y. Supp. 112.

An instrument in the form of a letter, by which the person insured by a policy of life insurance acknowledges the receipt of the policy and authorizes it to be "placed in force" and promises to pay a certain sum in a specified manner for the first annual premium, is not intended to be a present unconditional engagement and is not a negotiable instrument. *Equitable Trust Co. v. Newman* (1911), 72 Misc. 52, 129 N. Y. Supp. 259.

Payable to order or to bearer.—An instrument whereby the maker agrees to pay a certain sum of money at a fixed time and place, but which is not made payable to any person or to bearer, is not negotiable. *Hilborn v. Penn. Cement Co.* (1911), 145 App. Div. 442, 129 N. Y. Supp. 957.

§ 22. When promise is unconditional.

Payment out of particular fund.—A dated writing whereby the signer acknowledges an indebtedness to a specified person for services rendered for which she promises to pay a specified sum and further stating "in the event of my death I hereby authorize and direct the payment of the same out of the funds of my estate" is a promissory note payable upon demand. The direction for the payment out of the estate is mere surplusage and does not postpone the time of payment until the death of the maker. Such instrument while a promissory note is non-negotiable, and hence all defenses are available. *Gilbert v. Adams* (1911), 146 App. Div. 864, 131 N. Y. Supp. 787.

Statement of transaction.—An instrument executed and delivered to the general agent of a life insurance company which after acknowledging the receipt of a policy on the signer's life authorizes and requests the agent to place the policy in force and promises to pay to "you or your order" the first annual premium in stated installments, is a negotiable instrument. The mere fact that the consideration for the promise to pay the money was stated to be an indebtedness for a balance due on the first annual premium of the insurance policy, which had been actually delivered to the promisor, does not make the instrument non-negotiable either under

Transfer; indorsement, etc.

§§ 33, 42, 52, 55, 79, 91.

the customs and usages of merchants or under the Negotiable Instruments Law. *Equitable Trust Co. v. Taylor* (1911), 146 App. Div. 424, 131 N. Y. Supp. 475.

§ 33. Blanks; when may be filled.

Presumption of authority to fill blanks may be abutted by positive testimony by the signer that he gave no such authority, but signed the instrument to enable insurance agents to get voting strength through policies. *Equitable Trust Co. v. Lyons* (1911), 72 Misc. 49, 129 N. Y. Supp. 79.

No authority is to be presumed to add at the end of a note the words "with interest." *Dumbrow v. Gelb* (1911), 72 Misc. 400, 130 N. Y. Supp. 182.

§ 42. Forged signature; effect of.

Title to check through forged letter.—An impostor who by a forged letter obtains a check made payable to the person whose name he has assumed has no title thereto. *Mercantile Nat. Bank v. Silverman* (1911), 148 App. Div. 1.

Forgery.—A party cannot obtain title to a check through a forged indorsement of the payee. *Stein v. Empire Trust Co.* (1912), 148 App. Div. 850.

§ 52. What constitutes holder for value.

Prior to the passage of the Negotiable Instruments Law and from the time of the decision of *Coddington v. Bay*, 20 Johns. 637, it was the law of this state that in order to constitute one a holder for value as against a true owner, it was necessary that he part with some present consideration. But now, in order to constitute one the holder of a negotiable instrument for value, it is not necessary that he part with a present consideration. *King v. Bowling Green Trust Co.* (1911), 145 App. Div. 398, 129 N. Y. Supp. 977.

§ 55. Liability of accommodation party.

Accommodation indorsement of a promissory note by a corporation is *ultra vires*, unless authorized by its charter. *Carlaftes v. Goldmeyer Co.* (1911), 72 Misc. 75, 129 N. Y. Supp. 396.

Liability of accommodation indorser.—One who indorses a promissory note without consideration for the accommodation of the maker becomes simply a surety. *Easton Furniture Mfg. Co. v. Caminez* (1911), 146 App. Div. 436, 131 N. Y. Supp. 157.

§ 79. Transfer without indorsement; effect of.

A negotiable instrument may be transferred without indorsement and the transferee becomes the owner. He may maintain an action thereon in his own name, subject, however, to the equities which the debtor had at the time of the transfer against the claim while in the hands of the previous holder. Thus, a certificate of deposit, though payable to the order of the depositor on the return of the certificate properly indorsed, may be transferred by the payee without indorsement, and where she owns the whole fund as survivor, her right in no way depends upon a transfer from or the indorsement of the certificate by her husband's personal representative. *Martz v. State National Bank* (1911), 147 App. Div. 250, 131 N. Y. Supp. 1045.

§ 91. What constitutes a holder in due course.

Bona fide holder; what constitutes.—See *Buckley v. Lincoln Trust Co.* (1911), 72 Misc. 218, 131 N. Y. Supp. 105.

§ 94. When title defective.

False representations by payee as defense to maker.—In an action by an indorsee of a promissory note against the maker, the latter may show that the note was

§§ 98, 114, 118, 131, 166, 167. Presentment; notice.

made without consideration and for the accommodation of the payee, upon his false representation that he intended to use it for a specific purpose, and that he diverted it to another purpose. *Kennedy v. Spilka* (1911), 72 Misc. 89, 129 N. Y. Supp. 390.

§ 98. Who deemed holder in due course.

Note given for a gambling debt.—The holder in due course of a note given for a gambling debt must affirmatively prove that he holds in due course, as soon as it has been shown that the title of any person who negotiated the instrument was defective. *In re Hill*, 187 Fed. 214 (1911).

§ 114. Liability of irregular indorser.

Indorsement before delivery.—A plaintiff, seeking to hold the indorser of a promissory note under this section, must allege and is under the burden of proving that the instrument was indorsed before delivery. *Bender v. Bahr Trucking Co.* (1911), 144 App. Div. 742, 129 N. Y. Supp. 737.

§ 118.

Since joint payees or joint indorsees who indorse are deemed to do so jointly and severally, an action lies against any one of them individually. *Hodgens v. Jennings* (1912), 148 App. Div. 879.

§ 131. Presentment where instrument is not payable on demand.

An informal request for the payment of a demand note, not accompanied by a presentment of it and not intended as a formal presentment and demand, is not sufficient to put the note in dishonor so as to charge an indorser. Such informal demand, however, may have an important bearing on the question as to whether the note was actually presented for payment within a reasonable time. *State of N. Y. National Bank v. Kennedy* (1911), 145 App. Div. 669, 130 N. Y. Supp. 412.

§ 166. When notice sufficient.

Sufficiency of notice.—Inartificial language, accompanied by omission to give the date of the making of a note, the date of its maturity and the name of the payee, does not invalidate a notice of protest. *Herrmann Lumber Co. v. Bjurstrom* (1911), 74 Misc. 93, 131 N. Y. Supp. 619.

§ 167. Form of notice.

Proof service of notice.—An indorser's inability to recollect whether he received written notice of protest does not overcome the positive proof that such notice was written and mailed. *Herrmann Lumber Co. v. Bjurstrom* (1911), 74 Misc. 93, 131 N. Y. Supp. 619.

§ 201. When persons secondarily liable on, discharged.

Extension of time, discharge by.—An accommodation indorser, or surety, is entitled to have the engagement of the principal debtor preserved, without variation in its terms, and his assent to any change therein is essential to the continuance of his obligation. Any agreement of the creditor which operates to extend the time of payment of the original debt and suspends the right to immediate action is held to discharge the non-assenting indorser or surety, as the law will presume injury to him thereby. The creditor may arrange with his debtor in any way which does not effect either of these results, but to prevent a discharge of the indorser or surety the agreement must expressly reserve all the remedies of the creditor against him; in which case the latter will be in a position to pay immediately and then to proceed against the principal debtor. *National Park Bank v. Koehler* (1912), 204 N. Y. 174.

The maker of a note indorsed by defendant requested from the holder an exten-

sion of the time of payment and its acceptance of new notes payable in installments. The plaintiff agreed to extend the time of payment and to accept the new notes, provided the same should be indorsed by the defendant. The maker was unable at the time to procure the indorsement of the defendant upon the new notes, and in lieu thereof agreed with the plaintiff that the plaintiff should hold the old note as collateral until the new notes each should be paid; and plaintiff, in pursuance of such agreement, received the new notes and continued to hold the note indorsed by the defendant. It was held, that since the obligation of an indorser as a surety is *strictissimi juris*, he is entitled to insist that, within the strict application of the rule in such cases, he was released from his obligation by an agreement of the creditor with the principal debtor, to which he had not consented and which extended the latter's time of payment of its indebtedness. *National Park Bank v. Koehler* (1912), 204 N. Y. 174.

§ 210. Bills of exchange defined.

Where a bill of exchange is drawn by a corporation upon itself the instrument may be treated as an accepted bill or as a promissory note at the election of the holder. *Pavenstedt v. N. Y. Life Ins. Co.* (1911), 203 N. Y. 91.

A bill of exchange is payable on demand unless a specified date is mentioned. *Riddle v. Bank of Montreal* (1911), 145 App. Div. 207, 130 N. Y. Supp. 15.

§ 213. Inland and foreign bills of exchange.

The damages recoverable by the payee of a negotiable foreign bill of exchange protested for non-payment against the drawer may be deemed to be made up as follows: (1) The face of the bill; (2) interest thereon; (3) protest fees; (4) re-exchange, i.e., the additional expense of procuring a new bill for the same amount payable in the same place on the day of dishonor; or a percentage in lieu of such re-exchange in jurisdictions where it is prescribed by statute. Where a bill of exchange is drawn in a foreign country by a domestic corporation directed to itself in this state, and requiring itself to pay a certain sum in this state in our currency, the measure of damages upon its refusal to pay is the amount of the draft, with interest and protest fees. *Pavenstedt v. N. Y. Life Ins. Co.* (1911), 203 N. Y. 91.

§ 321. Check defined.

A bill of exchange drawn on a bank, if payable on demand, is a check. *Riddle v. Bank of Montreal* (1911), 145 App. Div. 207, 130 N. Y. Supp. 15.

§ 322. Within what time a check must be presented.

Reasonable time.—Where a check, drawn after banking hours on the afternoon of the day it was dated, is deposited the following day by the payee in his own bank of deposit, its presentation by such bank the day after such deposit to the bank on which it is drawn is a presentation within "a reasonable time." *Zaloom v. Ganim* (1911), 72 Misc. 36, 129 N. Y. Supp. 85.

§ 325. When check operates as an assignment.

Cause of action against drawee.—The payee of a check has no cause of action against the drawee for non-payment thereof before acceptance or certification. *Balsam v. Mutual Alliance Trust Co.* (1911), 74 Misc. 465, 132 N. Y. Supp. 325.

§ 326. Recovery of forged check.

Application of section.—This is not a statute which can be held to impose upon either party to an action an invariable rule of pleading, or an inflexible order and sequence of proof in the course of a trial. It is a general statute which promulgates

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| § 1. | Acts of notaries legalized. | L. 1912, ch. 78. |
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rules of substantive law rather than of pleading or evidence. Such a statute need not be pleaded, and under it either party may prove any fact which may establish a cause of action or defense, if the pleadings are such as to permit it under the general rules. Thus, in an action to recover a deposit paid out on a forged check, it was held error to exclude evidence which, if admitted, would have tended to prove that the bank had notice of the plaintiff's claim, within the year provided by the statute, that the money deposited with it had been paid upon forged checks. *Shattuck v. Guardian Trust Co.* (1912), 204 N. Y. 200, revg. 145 App. Div. 734, 130 N. Y. Supp. 658.

NEW YORK.

See City Court of New York.

L. 1912, ch. 522.—An act to grant to the city of New York islands, hummocks, has-socks, marsh and meadow lands, in Jamaica bay and vicinity. (*In effect Apr. 18, 1912.*)

NOTARIES PUBLIC.

L. 1912, ch. 78.—An act to legalize and confirm the official acts of notaries public and commissioners of deeds. (*In effect Mch. 26, 1912.*)

Section 1. The official acts of every person as notary public or commissioner of deeds within the state of New York, heretofore commissioned as such, which acts have been performed since the seventeenth day of May, nineteen hundred and eleven, so far as such acts might be affected, impaired or questioned by reason of change of residence made after appointment, or by reason of misnomer or misspelling of name or other errors made in the appointment or commission of said notary public or commissioner of deeds, or by reason of omission or failure to take the prescribed oath of office within the time required by law, or by reason of such persons being under the age of twenty-one years, or by reason of the expiration of the term of office of such notaries public or commissioners of deeds, where such notary public or commissioner of deeds has acted in good faith, upon payment being made by such notary public or commissioner of deeds of the legal fees for holding such office, are hereby legalized and confirmed and made effectual and valid, as the official acts of a notary public or commissioner of deeds legally qualified to perform the same, as fully as if neither of the various errors, omissions, matters and conditions hereinabove enumerated had occurred or existed.

§ 2. Nothing in this act contained shall affect any legal action or proceeding pending at the time this act takes effect.

§ 3. This act shall take effect immediately.

NOTICE OF TRIAL.

Code of Civil Procedure.

§ 977. Notice of trial and note of issue; calendar to be prepared.—At any time after the joinder of issue, and at least fourteen days before the com-

L. 1912, ch. 541.

Commission created.

§§ 1, 2.

mencement of the term, either party may serve a notice of trial. The party serving the notice must file with the clerk a note of issue, stating the title of the action, the names of the attorneys, the time when the last pleading was served, the nature of the issue, whether of fact or of law; and, if an issue of fact, whether it is triable by jury, or by the court, without a jury, and the particular nature of the same and the object of the action. The note of issue must be filed at least twelve days before the commencement of the term. The clerk must thereupon enter the cause upon the calendar according to the date of issue. The clerk must prepare the calendar and have the necessary copies ready for distribution at least five days before the commencement of the term. In the counties of New York, Kings, Queens, Nassau, Richmond, Albany, Erie, Niagara, Monroe, Onondaga, Schenectady, and Westchester, where a party has served a notice of trial, and filed a note of issue, for a term at which the case is not tried, it is not necessary for him to serve a new notice of trial, or file a new note of issue, for a succeeding term; and the action must remain on the calendar until it is disposed of. (*Amended by L. 1912, ch. 96, in effect Sept. 1, 1912.*)

ORDERS.

See *Motions and Orders.*

PANAMA PACIFIC EXPOSITION.

L. 1912, ch. 541.—An act to provide for the representation of the State of New York, at the Panama-Pacific International Exposition at San Francisco, California, celebrating the opening and commercial use of the Panama canal, and making an appropriation therefor. (*In effect Apr. 18, 1912.*)

§ 1. **Commission.**—There is hereby authorized a commission to be known as the Panama-Pacific exposition commission, to represent the state of New York at the Panama-Pacific International Exposition, to be held in San Francisco, California, in nineteen hundred and fifteen, and celebrate the completion and commercial use of the Panama canal.

§ 2. **Membership; vacancies; powers; organization.**—The commission hereby authorized shall consist of fifteen members, of which the governor is authorized to appoint five; the lieutenant-governor to select five from the membership of the state senate, and the speaker of the assembly to select five from the membership of the state assembly. Any vacancies occurring for any cause in this commission shall be filled by the governor or lieutenant-governor, or the speaker, in such manner as to maintain the same relative numerical representation of the executive, senate and assembly. Said commission shall encourage and promote a full and complete exhibit of the commercial, educational, industrial, artistic, military, naval and other interests of the state, and its citizens, at such exposition and celebration, and shall provide, furnish and maintain during the exposition a building

§§ 3-6.

Commission created.

L. 1912, ch. 541.

or buildings for a state exhibit and for the official headquarters of the state, and for the comfort and convenience of its citizens and exhibitors. This commission shall within thirty days after its appointment and upon notification by the secretary of state convene in the city of Albany, and elect a chairman and a vice-chairman and perfect its organization for the transaction of the duties devolving upon it by reason of this act.

§ 3. **Expenses; assistants.**—The members of the commission shall receive no compensation for their services, but shall be entitled to the actual necessary expenses incurred while in discharge of duties imposed upon them by the commission. Such commission may appoint a secretary and fix his compensation for all services to be performed in carrying out the provisions of this act, and the commission may also provide for such other clerical assistance and office facilities in this state or in San Francisco as it deems necessary, but no salaries or expenses shall be incurred for a longer period than ninety days after the close of the exposition.

§ 4. **Contracts.**—Such commission is hereby authorized to enter into a contract or contracts for carrying out the purposes of this act in an amount not exceeding in the aggregate the difference between the sum of seven hundred thousand dollars and the estimated expenses of the commission for the actual and necessary expenses of the members thereof while in the discharge of their duties, for office facilities and for the compensation of the secretary and other clerical assistants.

§ 5. **Appropriation.**—The sum of two hundred and fifty thousand dollars (\$250,000), or so much thereof as may be necessary for the accomplishment of the above specified purposes, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purposes of this act. Such money shall be paid by the treasurer on the warrant of the comptroller issued upon a requisition signed by the chairman and vice-chairman of the commission, accompanied by an estimate of the expenses for the payment of which the money so drawn is to be applied. Within ninety days after the close of the exposition, such commission shall make a verified report to the comptroller of the disbursements made by it, and shall return to the state treasury the unexpended balance of money drawn in pursuance of this act. No indebtedness or obligation shall be incurred under this act in excess of the appropriation herein made.

§ 6. **Reports.**—The commission shall, as requested by the governor, from time to time, render to him reports of its proceedings.

PARTNERSHIP LAW.

(L. 1909, ch. 44.)

§ 22. Fictitious names prohibited.

The commission of the acts forbidden by this section is not authorized by section 440 of the Penal Law. *Jenner v. Shope* (1912), 205 N. Y. 66, affg. 140 App. Div. 911.

§ 34. Effect of false statements or failure to publish terms.

See *Patterson v. Youngs* (1911), 72 Misc. 91, 129 N. Y. Supp. 673.

 Arson; assault; corporations.

PENAL LAW.

(L. 1909, ch. 88.)

§ 2. Definitions.

Murder is a felony at common law and under our statutes, and our statute does not require that the felony shall have been committed here in order that the offender may be arrested without a warrant if the officer has reasonable cause to believe that the person arrested committed it. *Burton v. New York Cent. & H. R. R. Co.* (1911), 147 App. Div. 557, 132 N. Y. Supp. 628.

§ 3. Construction of terms.

Subd. 5.—See *People v. Hoyt* (1911), 145 App. Div. 695, 130 N. Y. Supp. 505.

§ 222. Arson in second degree.

Evidence as to insurance of property.—Where the defendant in an action for arson in the second degree was a brother-in-law of the owner of the building where the fire occurred, it is error for the court to allow the jury to take into consideration the fact that the owner was insured, if there is no evidence connecting the defendant with the insurance, or with any interest therein, or proof showing that he had knowledge of the insurance, and nothing from which the inference can be drawn that he attempted to burn the premises that his relative might collect the insurance. *People v. Goldberg* (1911), 146 App. Div. 335.

§ 240. Assault in first degree defined.

An indictment drawn in the common-law form charging the crimes of assault in the first and second degree examined, and held, to warrant a conviction of the defendant of the crime as defined by the provisions of the statute. *People v. Castaldo* (1911), 146 App. Div. 767, 130 N. Y. Supp. 708.

§ 270. Practicing or appearing as attorney without being admitted and registered.

Validity of judgment where attorney not duly admitted.—A judgment of the Municipal Court of the City of New York rendered on the motion of one acting as attorney for the plaintiff, who has not been admitted to practice, is void and may be attacked collaterally. *Puma v. McGonigle* (1911), 73 Misc. 35, 132 N. Y. Supp. 242.

§ 273. Misconduct by attorneys.

In attempting to deceive the court an attorney at law is not guilty of a misdemeanor under this section unless he is found to have had an evil intent to deceive. *People ex rel. Brown v. Tighe* (1911), 146 App. Div. 491, 131 N. Y. Supp. 693.

§ 280. Corporations and voluntary associations not to practice law.

A corporation cannot practice law either directly or indirectly by employing lawyers to practice for it. *Matter of City of New York* (1911), 144 App. Div. 107, 128 N. Y. Supp. 999.

§ 297. Misconduct by directors of moneyed corporations.

The director of a trust company is amenable to the provisions of this section, if he willfully does any act as such director which the trust company itself is prohibited by statutory law from doing, or if he willfully omits to prevent the doing

L. 1912, chs. 208, 211.

False statements as to banks.

§§ 303, 304, 341, 421.

by its board of directors of any act which the trust company itself is prohibited from doing. *People v. Knapp* (1911), 147 App. Div. 436, 445, 132 N. Y. Supp. 747.

Sufficiency of indictment against director of trust company. *People v. Knapp* (1911), 147 App. Div. 436, 132 N. Y. Supp. 747.

§ 303. False statements or rumors as to banking institutions.—Any person who willfully and knowingly makes, circulates or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, savings bank, banking association, building and loan association or trust company doing business in this state, or who knowingly counsels, aids, procures or induces another to start, transmit or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. (*Added by L. 1912, ch. 211, in effect Sept. 1, 1912.*)

§ 304. Falsification of books, reports or statements of corporations subject to the banking law, by an officer, director, trustee, employee or agent thereof.—Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable who makes a false entry in any book, report or statement of such corporation with intent to deceive any officer, director or trustee thereof, or any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public officer, office or board to which such corporation is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or who, with like intent, willfully omits to make a true entry of any material particular pertaining to the business of such corporation in any book, report or statement of such corporation made, written or kept by him or under his direction, is guilty of a felony. (*Added by L. 1912, ch. 208, in effect Sept. 1, 1912.*)

§ 341. Exceptions.

A person whose former wife has been continuously absent for five years cannot be held as matter of law to have known that his wife was living within that time merely because in the evidence produced to show that he believed her to be dead it appears that a person told him she died within three years of his second marriage. The question whether he believed she was dead is one of fact for the jury. *People v. Dauchy* (1911), 148 App. Div. 366.

§ 421. Untrue and misleading advertisements.—Any person, firm, corporation or association or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published in this state, knowingly makes or disseminates any statement or assertion of fact concerning the quantity, the quality, the value, the method of production or manufacture, or the reason for the price of his or their merchandise, or the manner or source of purchase of such merchandise, or the possession of prizes, rewards or distinctions conferred on account of such merchandise or the

§§ 440, 483.

Advertisements; endangering life of child.

L. 1912, ch. 321.

motive or purpose of a sale, intended to give the appearance of an offer advantageous to the purchaser which is untrue or calculated to mislead; or any person, firm, corporation or association or any employee thereof, who, in a newspaper, circular, circular or form letter or other publication published or circulated in any language in this state, knowingly makes or disseminates any statement or assertion of fact knowing the same to be false, concerning the extent, location, ownership, title or other characteristic, quality or attribute of any real estate located in this state or elsewhere, or the motive or purpose of a sale of such real estate, or concerning the offer of prizes, rewards, distinctions, premiums, discounts, or reductions conferred on account of the solving of any puzzle or the signing of any coupon or ticket or by any other method, intended to give the appearance of an offer advantageous to the purchaser which is untrue and calculated to mislead, is guilty of a misdemeanor. Nothing contained in this section shall apply to a sale of real estate at public auction conducted by an auctioneer duly licensed by a city of the first class. (*Amended by L. 1911, ch. 759, and L. 1912, ch. 321, in effect Apr. 15, 1912.*)

§ 440. Conducting business under assumed name.

Application and effect of section.—Section 440 of the Penal Law was not intended to repeal the existing provisions of law so that thereafter, as against the public, a person might conduct business under any name, style or title, provided that he filed a certificate stating his intention to conduct business under that name or style; or to authorize the commission of the acts forbidden by section 22 of the Partnership Law and made criminal by section 924 of the Penal Law, but was intended to include and apply to a different class of cases from those dealt with in section 924 of the Penal Law and the provisions of section 22 of the Partnership Law. *Jenner v. Shope* (1912), 205 N. Y. 66, *affg.* 140 App. Div. 911.

§ 483. Endangering life or health of child.

In order to justify a conviction for a violation of this section in corrupting the morals of an infant under sixteen years of age by inducing him to steal from his employer, the people must establish (1) that the defendant was instrumental in inducing the infant to steal, and (2) that the infant was at the time actually or apparently under the age of sixteen years. The fact that such infant was under sixteen years of age at the time the defendant induced him to steal may be shown by testimony of himself and his father as to the date of his birth. *People v. Myrenberg* (1911), 146 App. Div. 854, 131 N. Y. Supp. 742.

Consent by a mother to the employment of a minor in a dangerous occupation does not prevent her from maintaining an action as his administratrix to recover for his death caused by the negligence of the master who employed him, if there be other next of kin of the decedent. *Stenson v. Flick Construction Co.* (1911), 146 App. Div. 66, 130 N. Y. Supp. 555.

In order that a master may be held liable for the death of an employee under sixteen years of age upon the ground that he employed him in a dangerous occupation contrary to this section, it must be shown that the master knew that the decedent was under sixteen years of age, or that his appearance was such as to put him upon inquiry with respect thereto. Mere proof that the decedent was three months under sixteen years of age at the time of his death without any evidence as to his appearance with respect to age is not sufficient to take the case

L. 1912, ch. 169.

Destitute children; conspiracy.

§§ 486, 511, 580.

to the jury where the sole right to a recovery is predicated upon the statute. *Stenson v. Flick Construction Co.* (1911), 146 App. Div. 66, 130 N. Y. Supp. 555.

§ 486. Prohibited acts; destitute children.—*Subdivision 5, amended by L. 1912, ch. 169, in effect Apr. 5, 1912, by adding at the end the following:*

If it shall appear to the board of managers, trustees or other officers in charge of said incorporated charitable, reformatory or other institution to which any such child has been so committed that said child be incorrigible and that his or her presence therein is seriously detrimental to the welfare of the institution and other children therein, an application may be made to the court or magistrate who committed the said child to said institution, or to a justice of the supreme court in the judicial district in which said institution is located, for an order transferring said child to another incorporated charitable, reformatory or other institution, governed or controlled by persons of the same religious faith as the parents of the said child, when practicable, said institution or reformatory to be one designated by the state board of charities for the receipt and detention of such incorrigible children. Such application shall be by petition signed by the officer or the person in charge of such institution and shall state the causes for seeking such transfer, and due notice of such application with a copy of the petition shall be served personally or by mail at least eight days before the hearing, on the parents or guardian of said child and the officer of the locality which would be chargeable for the support of such child so transferred, and upon the hearing of said petition such court, magistrate or justice may grant such order of transfer if it appears to his satisfaction that the facts alleged are true and that such transfer should be made; and any child so transferred shall be confined in such institution to which such transfer shall be made with the same force and effect as the confinement in the institution in the first instance and under the same terms and conditions.

§ 511. Consequence of sentence to imprisonment for life.

See *Ghielmi v. Ghielmi* (1911), 72 Misc. 511, 131 N. Y. Supp. 333.

§ 580. Definition and punishment of conspiracy.

The test of the application of the statute is the purpose of the combination, and if the object and means be lawful, there is no conspiracy, even though a third person may be incidentally injured. An agreement between a mason builders' association and bricklayers' unions that the former must include in their contracts all cutting of masonry, interior brickwork, the paving of brick floors, the installing of concrete blocks, the brickwork of the damp-proofing system and all fireproofing—floor arches, slabs, partitions, furring and roof blocks—and that they shall not lump or sublet the installation, if the labor in connection therewith is bricklayers' work as recognized by the trade, the men employed upon the construction of the walls to be given the preference; and further that no members of such unions shall work for anyone not complying with such agreement, is for a lawful purpose and not within the statute. *National Fireproofing Co. v. Mason Builders' Ass'n*, 169 Fed. 259 (1909); same case, 145 Fed. 260.

Use of word boycott not as intended by this section.—A statement in defendant's

newspaper that plaintiff had an absolute monopoly of the engagement of artists for the Metropolitan Opera House; that nobody could be engaged unless he acted as intermediary; that he was an autocrat, and held up opera house contracts and boycotted the best singers; that he boasted of his power, saying that he had a "little garden," and that every artist wishing to enter the Metropolitan Opera House must pass through his gate, is not libellous, although commenting unfavorably on this method of doing business and expressed in a manner derogatory to the plaintiff. Boycotting is a crime in New York, but it is quite apparent that in the article the word boycott was not used as referring to the offense covered by this section, but a mere synonym of "holding up"—not submitting for engagement the names of any artists he did not approve. *Astruc v. Star Co.*, 193 Fed. 631 (1912).

§ 664. Misconduct of officers and directors of stock corporations.

The statute does not forbid a corporation to purchase its own stock, nor does it forbid it to enter into a contract to do so. What it does forbid is the consummation of such a contract by making the purchase otherwise than out of surplus. *Richards v. Wiener Co.* (1911), 145 App. Div. 353, 129 N. Y. Supp. 951.

§ 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.

See *People v. Knapp* (1911), 147 App. Div. 436, 442, 132 N. Y. Supp. 747.

§ 720. Disorderly conduct on public conveyances.

A conviction for public intoxication is not a bar to a prosecution under this section for disorderly conduct growing out of the same transaction. *People v. Bevins* (1911), 74 Misc. 377.

§ 751. Misdemeanors at, or in connection with, political caucuses, primary elections, enrollment in political parties, committees, and conventions.

Subd. 12.—See *People v. Zerillo* (1911), 146 App. Div. 812, 131 N. Y. Supp. 500.

§ 760-a. Misconduct in relation to designation petitions.—Any person who:

1. Pays, lends, contributes or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or

2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter to sign a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or

3. Receives, agrees or contracts for any money, gift, loan or other valuable consideration, office, place or employment for himself or any other person, for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election; or

4. Pays or agrees to pay money or other valuable consideration, to any person for his services in canvassing for or otherwise procuring the signa-

L. 1912, ch. 207.

Extortion.

§§ 850-852, 880.

tures of voters to a petition for the designation of a candidate or candidates for party nomination or for election to a party position to be voted for at a primary election, upon the basis of the number of names to such petition procured by such person, or at a fixed amount per name; or

5. Represents to any person as an inducement for signing a petition for the designation of a candidate for party nomination or for election to a party position to be voted for at a primary election, that the person soliciting such signature is to be compensated upon the basis of the number of names procured by such person, or at a fixed amount per name,

Is guilty of a misdemeanor. (*Added by L. 1912, ch. 207, in effect Apr. 8, 1912.*)

§ 850. Extortion defined.

The word "property," as used in this section, embraces every species of valuable right and interest. The right to labor is property within this provision. Thus, one who, having procured another employment as a painter, compels him to pay over a portion of his wages by a threat to procure his discharge if he did not do so, is guilty of extortion. *People ex rel. Short v. Warden of City Prison* (1911), 145 App. Div. 861, 130 N. Y. Supp. 698.

§ 851. What threats may constitute extortion.

Extorting money under threat by letter to kill a child, see *People v. Campisi* (1911), 145 App. Div. 264, 129 N. Y. Supp. 974.

Attempt to commit extortion; what constitutes.—Where a party received two letters both demanding money, the first commanding secrecy and delivery to a boy of a sum of money, and the second the deposit of the sum under the stairs of a factory at a designated corner, with this sentence of caution: "Think well; fail not; if you fail the Saturday night that you pay not will not pass," and the defendant was seen at the time and place where the deposit was ordered, there is an unlawful demand of money and a threat to kill, constituting an attempted extortion. An attempted extortion may be by written or oral threat. *People v. Misiani* (1912), 148 App. Div. 797.

An indictment for an attempt to commit extortion is sufficient if it set out the crime as the statute defines it. Where threats are made by letter it is unnecessary to allege the letters *in extenso*. *People v. Misiani* (1912), 148 App. Div. 797.

§ 852. Punishment of extortion.

Punishment for attempt to extort money.—Where a defendant has been indicted for "feloniously and extorsively" attempting "feloniously and extorsively to obtain" money, and has been convicted and sentenced to state prison for not less than three nor more than five years, and has served over a year of his sentence, and it is conceded that the threat by which he undertook to extort money was verbal, and that he was guilty of a misdemeanor only, the judgment will be reversed and the defendant discharged. *People v. Scheuren* (1911), 148 App. Div. 324.

§ 880. Definitions.

The essential elements of the crime of forgery have not been changed by the Penal Law. *Pople v. Hoyt* (1911), 145 App. Div. 695, 130 N. Y. Supp. 505.

An indictment for forging a deed is sufficient where it sets forth the deed and charges that the defendant forged the same with intent to defraud. It is unnecessary to state how the forgery was committed, or to set forth the name of the

§§ 881, 885, 889.

Forgery.

L. 1912, ch. 342.

person to whom the forged instrument was uttered. *People v. Hoyt* (1911), 145 App. Div. 695, 130 N. Y. Supp. 505.

§ 881. Uttering forged instruments is forgery.

Uttering forged instrument.—Putting a forged deed on record is uttering it within the meaning of the statute (see § 2051, *post*). *People v. Valentine* (1911), 147 App. Div. 31, 131 N. Y. Supp. 733.

Indictment.—It is unnecessary in an indictment for uttering a forged instrument to set forth either the particular manner in which it was forged or the manner in which it was uttered. Where an indictment states facts sufficient to constitute the crime of forgery under this section, and the evidence establishes said crime, a judgment of conviction will not be reversed because the charging clause of the indictment stated the crime to be "uttering, offering, disposing of and putting off as true, a certain forged, altered, and fraudulent deed" and did not state that it was knowingly done. *People v. Valentine* (1911), 147 App. Div. 31, 131 N. Y. Supp. 733.

§ 885. False certificate to certain instruments is forgery.

When similar false certificates by defendant may be proved to show knowledge, intention and absence of mistake.—On the trial of defendant on an indictment under this section, charging that as a commissioner of deeds he "willfully certified falsely" that a certain mortgage was duly acknowledged before him by a person purporting to be the mortgagor, it appeared among other things that no person of the name of the alleged mortgagor had ever been connected with the title to the mortgaged premises; that there was a false certificate of record indorsed on the mortgage; that it purported to cover adjoining halves of two city lots and that defendant embezzled the moneys purporting to be secured by the mortgage, but from time to time paid the mortgagee the interest thereon; the People, solely for the purpose of showing that no person of that name had acknowledged the instrument, and that if any person had, the defendant knew it was not the person described therein and that the transaction was part of a continuous scheme to defraud the mortgagee, offered eight similar mortgages to the same mortgagee acknowledged by the defendant purporting to be made by different mortgagors, which were received in evidence. It was held no error; that in order to show knowledge, intention and the absence of mistake, the district attorney had the right to prove similar acts, done under similar circumstances at about the same time, with intent to defraud the same person by the same means. The common method, purpose and victim formed the connecting links which strung together the nine successive and successful efforts to defraud pursuant to a common scheme. *People v. Marrin* (1912), 205 N. Y. 275.

§ 889. Forgery in third degree.—*Subdivision 4, amended by L. 1912, ch. 342, in effect Sept. 1, 1912, as follows:*

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or, with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, con-

tract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered,

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or,

2. Makes a false entry in any such account or book of accounts; or,

3. Willfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction

Is guilty of forgery in the third degree.

4. The altering, erasing, obliterating, or destruction of any account, book of account, record, or writing, or the making of a false entry in an account, statement of financial condition, or book of accounts, or the willful omission of material entries in such account, statement or books of account, by any person, whether by his own hand or the hand of another, if made with intent to defraud creditors or to conceal a crime, or to conceal from creditors or stockholders or other persons interested matters materially affecting the financial condition of any individual, corporation, association, or partnership; or to provide a basis for the obtaining of credit or property by or for such individual, corporation, association, or partnership, shall render such person guilty of forgery in the third degree, within the meaning of this section; but this provision shall not apply to any clerk, bookkeeper, or other employee, who, without personal profit or gain, merely executes the orders of his employer.

False entries in books of account.—At common law an individual may keep books of account of all or part of his transactions, or he may omit to do so altogether. So far as the statute includes within the definition of forgery the falsification of books of account by erroneous entries or by omissions to enter any material particulars relating to the transaction of the business of an individual, it refers to entries or omissions by persons who have a duty as employees or in other similar capacities to keep true books of account of the business of the employer. It was not intended to and does not include a person who omits an entry of a business transaction from his own books of account with intent to conceal from his creditors the disposition of his property. *People ex rel. Isaacson v. Fallon* (1911), 202 N. Y. 456.

§ 947. Verbal false pretense not criminal.

To constitute the crime of grand larceny by false pretenses four elements must concur: (1) The making of a knowingly false representation as to an existing fact, qualified by the section in question, so that it shall not refer to the defendant's means or ability to pay. (2) Reliance upon the representation. (3) The obtaining of the property by means thereof. (4) An intent to defraud. *People v. Whitney* (1911), 146 App. Div. 98, 99, 130 N. Y. 625.

§§ 970, 986, 994, 995, 1044.

Gambling; murder.

§ 970. Common gambler.

Playing poker for recreation not gambling.—A person, who merely takes part in a game of poker precisely upon the same terms as the other participants in the game, for mere amusement or recreation and not as a professional gamester, does not thereby become a common gambler under this section. *Peo. v. Bright* (1911), 203 N. Y. 73.

§ 986. Pool-selling, book-making, bets and wagers.

Application prior to amendment of 1910.—The defendant is charged with the crime of receiving, recording and registering bets and wagers upon the result of a horse race. The evidence shows that the defendant did make bets with certain persons on a horse race, but there is no evidence that he recorded or registered a bet in any other way than by receiving a memorandum made by the party with whom he bet. It was held, that this memorandum was not made on his behalf and that making a bet or wager unaccompanied with record or registry was not at the time of this transaction a violation of the provisions of section 986 of the Penal Law. *People v. Lambriz* (1912), 204 N. Y. 261, revg. 143 App. Div. 956.

§ 994. Property staked may be recovered.

Application of this section is limited to acts of gambling, commonly known as bets or wagers contingent upon the happening of an event, such as racing or elections, while section 995 has to do with games of chance, such as card or dice playing. The three months' limitation contained in the latter section is applicable only to the recovery of money wagered on games. *Wilkenfeld v. Attic Club* (1911), 74 Misc. 543.

§ 995. Losers of certain sums may recover them.

Complaint, in an action to recover money lost at play, that falls to allege that the plaintiff at any time or sitting lost the sum or value of twenty-five dollars or upwards, does not state facts sufficient to constitute a cause of action. *Wilkenfeld v. Attic Club* (1911), 74 Misc. 543.

It is a good defense, in an action to recover money lost at play, that the cause of action did not accrue within three calendar months before the action was commenced. *Wilkenfeld v. Attic Club* (1911), 74 Misc. 543.

§ 1044. Murder in first degree defined.

Premeditation and deliberation, sufficient evidence of. *People v. Falletto* (1911), 202 N. Y. 494.

Murder while committing felony.—Evidence held sufficient to sustain conviction for murder in the first degree while committing the crimes of burglary and rape. *People v. Schermerhorn* (1911), 203 N. Y. 57; *People v. Falletto* (1911), 202 N. Y. 494.

An indictment in the common-law form is sufficient to sustain a conviction for murder in the first degree, even though there is no evidence of premeditation and deliberation, where the evidence clearly shows that the crime was committed while engaged in the commission of a felony. *People v. Schermerhorn* (1911), 203 N. Y. 57.

Under the common-law form of indictment the court properly submitted the case to the jury upon the theory that they could convict the defendant of murder in the first degree in the absence of any premeditation or deliberation on his part provided they found that he killed the deceased while engaged in the commission of a felony. *People v. Wolter* (1911), 203 N. Y. 484.

While engaged in attempt to commit felony.—On examination of the evidence on

L. 1912, ch. 340.

Murder; larceny.

§§ 1046, 1052, 1293-b.

appeal from a judgment on a verdict convicting defendant of murder in the first degree, held, that there was sufficient evidence to sustain a finding that defendant personally shot and killed the person for whose murder he was on trial with a deliberate and premeditated design to effect death; that it also suffices to uphold the conviction even if the killing was unintentional, on the ground that the homicide was committed by persons engaged in a common attempt to commit a felony. If the natural and probable consequence of a conspiracy to obtain money feloniously and by force is the killing of a person in case of resistance on his part, a defendant who is a party to the conspiracy is liable for murder in the first degree, although he did not do the actual killing, and a request which assumes that if a defendant did not fire the fatal shot he could escape liability unless the conspiracy expressly contemplated the use of such force or violence as might cause death, is properly refused. *People v. Friedman* (1912), 205 N. Y. 161.

§ 1046. Murder in second degree defined.

The conviction of murder in the second degree does not operate as an acquittal of murder in the first degree and the accused can be put upon trial for the higher grade of homicide when the original judgment is reversed or the verdict otherwise set aside at his instance. *People v. McGrath* (1911), 202 N. Y. 445.

§ 1052. Manslaughter in second degree defined.

Negligence in use of explosives.—A jury may find a defendant guilty of manslaughter in the second degree, where it appears that, being a licensed blaster and prosecuting his trade within the limits of a city and in a place where persons were liable to suffer damage or death by reason of his negligence, he used double the amount of explosives which careful use would require, so that the explosion threw rocks so as to kill a person standing on the public thoroughfare over 125 feet from the place of the explosion. Such gross negligence under the circumstances justified a conviction for manslaughter although there was no malice or evil design. *People v. Clemente* (1911), 146 App. Div. 109, 130 N. Y. Supp. 612.

§ 1221. Intoxication in a public place.

Courts of special sessions have exclusive jurisdiction in the first instances to determine a charge of intoxication in violation of this section. *People v. Quimby* (1911), 72 Misc. 421, 131 N. Y. Supp. 349.

§ 1275. Violations of provisions of Labor Law.—*Subdivision 7-a, added by L. 1912, ch. 383, in effect Apr. 16, 1912, as follows:*

7-a. The provisions of article ten-a of the labor law relating to the bureau of industries and immigration;

§ 1290. Larceny defined.

Proof of the commission of the crime of obtaining money by false pretenses, which constitutes statutory larceny, will not authorize a conviction under an indictment also charging common-law larceny. *People v. Cohen* (1911), 148 App. Div. 205.

See generally *Danzer v. Nathan* (1911), 145 App. Div. 448, 452, 129 N. Y. Supp. 966.

§ 1293-b. Obtaining property or credit by use of false statement.—Any person

1. Who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writ-

§§ 1296, 1306, 1308.

Grand larceny.

L. 1912, ch. 164.

ing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit of either himself or of such person, firm or corporation; or

2. Who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in subdivision one of this section; or

3. Who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or such person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned in subdivision one of this section.

Shall be guilty of misdemeanor and punishable by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both fine and imprisonment. (*Added by L. 1912, ch. 340, in effect Sept. 1, 1912.*)

§ 1296. Grand larceny in second degree.—A person is guilty of grand larceny in the second degree who, under circumstances not amounting to grand larceny in the first degree, in any manner specified in this article, steals or unlawfully obtains or appropriates:

1. Property of the value of more than fifty dollars, but not exceeding five hundred dollars, in any manner whatever; or,

2. Property of any value, by taking the same from the person of another; or,

3. A record of a court or officer, or a writing, instrument or record kept filed or deposited according to law, with, or in keeping of any, public office or officer. (*Amended by L. 1912, ch. 164, in effect Sept. 1, 1912.*)

§ 1306. Claim of title a ground of defense.

See *Danzer v. Nathan* (1911), 145 App. Div. 453, 129 N. Y. Supp. 993.

§ 1308. Buying or receiving stolen or wrongfully acquired property.

Sentence of one convicted of receiving stolen goods.—One convicted of receiving

L. 1912, ch. 163.

Libel; injury to property.

§§ 1340, 1344, 1348, 1433.

stolen goods may be sentenced, under the provisions of this section, either to a state prison for not more than five years, or to a county jail for not more than six months, but may not be sentenced to the penitentiary in the county of New York for a year. *People ex rel. Rodenberg v. Warden, etc.* (1911), 75 Misc. 77.

§ 1340. Libel defined.

Criminal intent is a necessary element of the crime and the statute must be construed strictly in favor of the accused. *People ex rel. Carvalho v. Warden* (1911), 144 App. Div. 24, 128 N. Y. Supp. 837.

§ 1344. Liability of editors and others.

Application.—The mere fact that individuals hold the offices of president, treasurer and secretary of a corporation publishing a libel is not sufficient to show their responsibility therefor under this section; there is no presumption that such an officer is manager of the corporation. *People ex rel. Carvalho v. Warden* (1911), 144 App. Div. 24, 128 N. Y. Supp. 837.

§ 1348. Restriction on indictment for libel.

Application of Act of Congress of 1898.—As the law of New York results in the unity as one criminal act of the publication of a libel and its circulation, and allows but a single conviction for the combined act, and affords adequate means for punishing such circulation on a reservation of the United States within that state, resort cannot be had to the United States court, under § 2 of the Act of Congress of July 7, 1898, to punish the act of such circulation on the basis that it is a separate and distinct offense from the publication. The assimilative crimes act of 1898 cannot be used as a means of frustrating the laws of the state within which the reservation is situated; had one accused of a crime consisting of several elements treated a unit by the state law, so that there can be but one trial and conviction thereunder, cannot be indicted and tried in the United States court for a separate element committed on such reservation, the other elements of the crime being committed in other portions of the state. *United States v. Press Publishing Co.*, 219 U. S. 1 (1910).

§ 1433. Injury to property; how punished.—A person who unlawfully and wilfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any handcar, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than fifty dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

§§ 1530, 1620, 1692, 1897.

Dangerous weapons.

L. 1912, ch. 163.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof. (*Amended by L. 1912, ch. 163, in effect Sept. 1, 1912.*)

§ 1530. Public nuisance defined.

The keeping of a door locked, bolted and fastened in a factory during working hours is a violation of statutory law. If in that way the owners render a considerable number of persons insecure in life, they maintain a public nuisance according to the terms of this section. *People v. Harris* (1911), 74 Misc. 353, 362.

§ 1620. Perjury.

Materiality of testimony.—Wilfully and knowingly testifying to an immaterial fact is not perjury. *People v. Peck* (1911), 146 App. Div. 266, 130 N. Y. Supp. 967.

An indictment for perjury need not charge that any or all of the sworn statements of the defendant were material or were of and concerning a matter material in a proceeding then being legally conducted, provided the facts set forth are sufficient in themselves to show that the alleged false statements were material. Such materiality, however, must be shown in the indictment itself, either by direct statement or by the facts therein set forth. *People v. Peck* (1911), 146 App. Div. 266, 130 N. Y. Supp. 967.

§ 1692. Rescue of a prisoner.

Application.—Sections 1692 and 1696 of the Penal Law, read together, provide a complete scheme for the punishment of a person who rescues a prisoner held in lawful custody, etc., and for the punishment of one who aids and assists a prisoner under arrest in escaping or attempting to escape. *People v. Marks* (1912), 75 Misc. 404.

Indictment.—Upon evidence before the grand jury that a police officer had in lawful custody upon a charge of felony one who he had reasonable cause to believe had committed the crime; that his prisoner attempted to escape and that defendant attempted to rescue him from the police officer, defendant is indictable under both sections 1692 and 1696 of the Penal Law, and, there being sufficient legal evidence to bring defendant's acts within said section 1692, the failure to include a count under the other section does not vitiate the indictment. *People v. Marks* (1912), 75 Misc. 404.

§ 1820-a. Notaries and commissioners of deeds.

Subdivision 2.—A notary public who draws and takes the affidavit of an individual in such form as to lead the affiant to believe that it is of the general character of a passport is guilty of a violation of subdivision 2 of this section. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 550.

§ 1824. Attempting to prevent officer from performing duty.

See *People ex rel. Fried v. Frank* (1911), 73 Misc. 1, 130 N. Y. Supp. 701.

§ 1897. Carrying and use of dangerous weapons.

The amendment of 1911, making it a misdemeanor to have in one's possession certain weapons of a size which may be concealed on one's person, means a physical and not a constructive possession, and does not extend to having a weapon of the kind described in a cabinet at home. *People ex rel. Darling v. Warden* (1911), 74 Misc. 151.

The Commissioner of Agriculture, his appointees and employees may carry dangerous or deadly weapons in any public place at any time without a written license

L. 1912, ch. 312.

Sunday; waiver of immunity.

§ 2446.

therefor when enforcing the provisions of article 5 of chapter 9 of the Laws of 1909 as amended. Rept. of Atty. Genl. (1911), Vol. 2, p. 631.

The carrying or possessing of a slungshot even without proof of specific ulterior criminal intent is within the character of acts which the Legislature may condemn. Such legislation does not violate the provision of the Constitution of the United States that the right of the people to keep and bear arms shall not be infringed, which is not designed to control legislation by the state. Moreover, a slungshot is not one of those weapons intended either by the Constitution or the Bill of Rights. Such possession must be a knowing and voluntary one which places the weapon within the immediate control and reach of the accused and where it is available for unlawful use if he so desires, and should not be construed to mean a possession such as would theoretically and technically follow from the legal ownership of a weapon in a collection of curious and interesting objects or which might result temporarily and incidentally from the performance of some lawful act. *People v. Persce* (1912), 204 N. Y. 397.

§ 1942. Punishment for fourth conviction of felony.

The penalty imposed by this section is not justified where the defendant has pleaded guilty of a lesser offense. *People v. Bretton* (1911), 144 App. Div. 282, 129 N. Y. Supp. 247.

§ 2010. Rape defined.

Age of female, sufficiency of evidence as to, see *People v. Marks* (1911), 146 App. Div. 11.

§ 2013. No conviction for rape on unsupported testimony.

See *People v. Morrison* (1911), 144 App. Div. 280.

§ 2034. Forcible entry and detainer.

This section applies only to forcible entry on and taking or keeping possession of real property, and not to the mere taking or retaining possession of a chattel which constitutes simply a trespass. Where defendants without force entered the premises of complainant and took possession of a stove upon the claim that it had not been paid for under the terms of a conditional contract for its sale, they cannot be convicted of a violation of this section though the complainant testifies that she was intimidated and threatened and the peace of the household was disturbed by defendants in their efforts to remove the stove. *People v. Baldwin* (1911), 74 Misc. 384.

§ 2145. Public sports on Sunday.

A public exhibition of flying machines in operation, open to the public on payment of an admission fee, or if otherwise carried on in such manner as to disturb the peace of the neighborhood, is forbidden on Sunday. Rept. of Atty. Genl. (1911), Vol. 2, p. 642.

§ 2152. Theatrical and other performances on Sunday.

Contracts providing for Sunday performances of a character prohibited by the laws of this state are void and unenforceable. *Albera v. Sciaretti* (1911), 72 Misc. 496.

§ 2411. Using false weights and measures.

See *People v. Golaberg* (1911), 146 App. Div. 950, 131 N. Y. Supp. 481.

§ 2446. Waiver of immunity.—If it be provided by this chapter or any other general or special law that a person shall not be prosecuted or

§ 2446.

Waiver of immunity.

L. 1912, ch. 312.

subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, or that testimony so given or produced shall not be received against him upon any criminal investigation, prosecution or proceeding, such person may execute, acknowledge and file in the office of the county clerk a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such person shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced. (*Added by L. 1912, ch. 312, in effect Apr. 15, 1912.*)

PERSONAL PROPERTY LAW.

(L. 1909, ch. 45.)

§ 11. Suspension of ownership.

Limitations of future interest in personal property are governed by the statute regulating future estates in real property. *Matter of Hansen* (1911), 72 Misc. 610, 132 N. Y. Supp. 257.

Trust; lawful suspension.—A will devised the use of the testator's residence to his wife for life, at her death the property to become part of a trust. The testator placed his residuary estate in trust, to be converted into cash and to be divided into six shares, to be set apart for each of the testator's six children, the funds to be placed at interest for their benefit and for the benefit of the testator's wife. The trustees were directed to pay over to the wife two-fifths of the net income of each of the six portions for the term of her life, the remaining three-fifths of the income to be paid to the children. It was further provided that upon the death of the wife the share of two of the testator's children should be paid to them and that the shares of the other children be retained by the trustees, and the income be paid over to them until such time as the male children reached the age of thirty-five years when they were to receive the principal, the female children to receive the principal on reaching the age of thirty years. It was further provided that if any of the children should die without issue after the testator and before reaching the age which would entitle them to receive the principal, the share of such child should be apportioned among the surviving children equally and that the trust share of any child not having reached the prescribed age be proportionately increased upon the trusts aforesaid, and that those who were not *cestui que trustent*, nor within the age limitations prescribed by the will, should receive in cash the share so accruing to them respectively. It was further provided that in the case of the death of a child leaving issue before reaching the age entitling him to receive the principal, the share of the decedent should go to the issue, but be held in trust during the minorities of the issue and to be paid over to them at majority. It was held, that the provision giving the wife for life two-thirds of the income from the portions of the trust fund set apart for the children merely created a charge upon the income of the several trusts and did not also create a trust estate for the benefit of the widow, and hence the provision for the wife should not be considered on the question as to whether the trust was to continue for more than two lives in being at the testator's death. It was also held that the provision that in case a child should die without issue his share should be divided and added to the shares of the surviving children did not offend the statute against perpetuities by continuing the trust for three lives, because the direction to apportion such share among the survivors referred only to the original portion left to the several children, and if a child having taken a share of a deceased child should himself die, the sub-share would not pass to the trust shares of the survivors, but would be assets of the testator's estate undisposed of by the will. *Orr v. Orr* (1911), 147 App. Div. 753.

A bequest of funds in trust will be upheld only when, by every possible contingency provided by the terms of the trust, it will terminate at the end of two lives in being at the death of the testator. *Balley v. Buffalo Loan, etc., Co.* (1911), 75 Misc. 23.

Unlawful suspension.—Gift of a legacy to a hospital incorporated at a certain place at testator's death or within five years thereafter, with directions to testator's executors to retain the amount for five years after his decease is, in the absence of any such hospital at the time of the testator's death, an unlawful suspension. *Southampton Hospital Association v. Fordham* (1911), 72 Misc. 247, 131 N. Y. Supp. 91.

§§ 12, 19-21, 23, 31.

Investment of trust funds.

Where a trust is invalid for illegal suspension of the power of alienation, provisions as to accumulations of income which might otherwise be valid fall with the principal of the trust fund. *Bailey v. Buffalo Loan, etc., Co.* (1911), 75 Misc. 23.

§ 12. Gifts and bequests of personal property for charitable purposes.

See cases cited under Real Property Law, section 113.

§ 19. Disaffirmance of fraudulent acts by executors and others.

The creditor of a decedent may sue on his own behalf and for the benefit of all other creditors of the decedent to set aside conveyances formerly made by the decedent for the purpose of defrauding creditors without a prior demand on the debtor's executor to bring the suit. *Calkins v. Stedman* (1911), 146 App. Div. 202, 130 N. Y. Supp. 932.

§ 20. When trust vests in supreme court.

See *Williams v. Fischlein* (1911), 144 App. Div. 244, 129 N. Y. Supp. 129.

§ 21. Investment of trust funds.

When in 1895 a county treasurer was directed by the court, pursuant to section 1583 of the Code of Civil Procedure, to invest funds resulting from a partition sale "in permanent securities at interest" there was no statute in force requiring that where the funds were invested in a bond and mortgage on real estate the value of the lands must be double the amount of the investment. At that date the provisions of the Revised Statutes requiring the value of lands to be double the amount of the bond had been repealed, and section 21 of the Personal Property Law to the same effect had not yet been enacted. Hence, where said county treasurer invested such funds in a bond and mortgage on property having a greater value than the loan, but not twice the value, and a subsequent foreclosure resulted in a deficiency, the liability of the sureties of the treasurer to those entitled to the fund depends upon the equitable rule of due care and prudence, and is a question of fact to be determined by the jury. The sureties are not liable as a matter of law because the lands were not worth twice the amount of the investment. *Waydell v. Hutchinson* (1911), 146 App. Div. 448, 131 N. Y. Supp. 315.

§ 23. Revocation of trusts upon consent of all persons interested.

Application.—A deed of trust of personal property, by which the settlor was to receive the income for life, provided that if he was survived by a wife and children the trust fund should be divided among them in equal shares, but if he died leaving neither wife nor children, nor issue of deceased children him surviving, the income should be paid in equal shares to his brother and mother during her life and upon her death the whole to his brother; but in case he was survived by his wife or brother, but not both, the income was to be paid to the survivor for life and upon the termination of the trust the principal of the trust was to be distributed among the settlor's next of kin on his father's side. In an action to cancel the deed of trust the mother of the settlor and his brother, who was unmarried and without children, consented in writing to the revocation of the deed of trust under this section. It was held that a brother and a nephew of the plaintiff's deceased father did not during plaintiff's lifetime possess an estate in expectancy within the meaning of the statute (Real Property Law, § 59) which declares that an expectant estate is descendible, devisable and alienable in the same manner as an estate in possession; nor were they persons "beneficially interested" in the trust estate within the meaning of this section. *Robinson v. New York Life Ins. & Trust Co.* (1912), 75 Misc. 261.

§ 31. Agreements required to be in writing.

Contract for sale of goods.—While a contract for the sale of goods need not be comprised in a single writing in order to satisfy the Statute of Frauds, oral

Factors' act; loans on salaries.

§§ 42, 43.

evidence is not admissible to supply any of the essential terms of the contract omitted from the writing. Thus, where a series of letters relating to a sale of goods merely admit that some goods had been ordered, but do not disclose the kind, quantity, or purchase price, they do not satisfy the requirements of the statute. *Evans v. Pelta* (1911), 146 App. Div. 749, 131 N. Y. Supp. 411.

Agreement to guarantee bill of another.—A written memorandum providing that the person signing the same, guarantees all bills as they may become due for goods sold to his brother by a certain person, not to exceed the sum of \$500 of unpaid bills for goods which the brother might buy during one year from date, and further providing that when the brother shall owe the promisee the sum of \$500 the guarantor shall be notified, sufficiently complies with the Statute of Frauds. Such contract is not unenforceable for lack of mutuality. *Griffen v. Edelman* (1911), 146 App. Div. 744, 131 N. Y. Supp. 450.

Contract not to be performed within one year.—See *Sheingold v. Baer* (1911), 145 App. Div. 493, 129 N. Y. Supp. 924.

Amendment of answer so as to set up the statute of frauds refused. *Sheingold v. Baer* (1911), 145 App. Div. 493, 129 N. Y. Supp. 924.

§ 42. Lenders of money on salaries to file copies of agreement.

It is the obvious intention of this statute to provide simply that the employer, when he is to be charged with an obligation to pay the contract debts of his employee, shall have a copy of the instrument by which this obligation is imposed upon him, and a notice of the lien, to the end that he may be fully protected in withholding the sum necessary to discharge the obligation. *Thompson v. Erie Railroad Co.* (1911), 147 App. Div. 8, 131 N. Y. Supp. 627.

Notice to an employer must be given within three days after the loan is made and also within three days after an assignment or note is given. *Thompson v. Gimbel Bros.* (1911), 145 App. Div. 436, 129 N. Y. Supp. 1035.

The statute does not require notice to be given to the employer at every step of the transaction and before he has any interest in the matter. Where a copy of the assignment and a notice of the lien were duly filed with the employer within three days after the making of the assignment by the agent under the power of attorney, the employer is bound to honor the assignment, and, if he fail to do so, is liable to the assignee for the amount of the wages subsequently paid to the assignor up to the amount of the assignment. *Thompson v. Erie Railroad Co.* (1911), 147 App. Div. 8, 131 N. Y. Supp. 627.

§ 43. Factors' act.

Application.—Plaintiff delivered certain articles of jewelry to a broker, to sell the same for her account at specified prices less certain commissions. The defendant, a duly licensed pawnbroker, ignorant of the fact that the jewelry was not owned by the broker or that he was employed to sell the same for plaintiff, and acting in good faith, loaned a substantial sum to said broker on the pledge of the jewelry. In an action for the possession of the jewelry, or in case possession could not be had for its value, plaintiff attempted to prove that the broker was guilty of larceny in pawning the jewelry and, consequently, that the defendant got no title thereto or lien thereon. The trial court, under defendant's objection, refused plaintiff's request to submit that question to the jury, holding that it was immaterial whether the broker got possession of the jewelry by legal or illegal means. Both parties moved that a verdict be directed and the court directed a verdict for plaintiff upon the ground that there was such a limitation on the authority of the broker as to take the case out of the Factors' Act, or the general rule that a man would be estopped by giving the possession, coupled with the *indicia* of ownership, to the person who pawned the goods. It was held, error; that upon the facts sub-

§§ 44, 61, 62.

Sale of chattels; bulk sales.

mitted, the fact that the jewelry had been intrusted to the broker was sufficient to bring the action within the Factors' Act, under the authority of *Freudenheim v. Gütter* (201 N. Y. 94), and operated as a protection to the pawnbroker if he had acted in good faith; and held, also that the question whether the broker was guilty of larceny should have been submitted to the jury. *Schmidt v. Simpson* (1912), 204 N. Y. 434.

§ 44. Transfer of goods in bulk.

Burden of proof on purchaser; duty of making inquiry as to creditors.—Presumptively such a sale of goods in bulk, where no notice is given, is fraudulent and void, and the burden is on the purchasers to show that the sale was not fraudulent, that is, that the goods were sold in good faith and for a full and fair consideration. The burden is also upon such purchasers to show that there was no purpose or intent on their part to cheat or defraud the creditors of the vendor, especially the creditors who originally sold the goods to the vendor on credit. This section intends to and does in cases of sales of personal property in bulk, other than in the usual course of business, the business carried on by the seller, not including such sales by the persons and officers of court excepted from its provisions, impose upon the proposed purchaser the duty of making due inquiry of the proposed seller as to the creditors of such proposed seller, and that, if he fails to do this, he so acts at his peril, and is charged with notice of their existence. Evidence in this case examined and sale held to be fraudulent. *In re Caloi*, 185 Fed. 642 (1911).

§ 61. Conditional sale of railroad equipment and rolling stock.

Locomotives used by a contractor in construction work on railroads, and incapable of use upon the usual railroad, are not rolling stock within the meaning of this section. These two considerations seem to have been ground for the enactment of this statute: First, because railway mortgages of rolling stock were already recorded as real estate mortgages; second, because bondholders with after-acquired property clauses could not protect themselves against secret vendors' liens upon new rolling stock necessarily substituted when old stock wore out. The statute did not intend to cover chattels which were used upon a mere temporary road of rails, having none of the characteristics in law of a common carrier. *In re Ferguson Contracting Co.*, 183 Fed. 880 (1910).

§ 62. Conditions and reservations in contracts for the sale of goods and chattels.

Constitutionality.—This provision is not unconstitutional even where it relates to chattels not so affixed as to become a part of the realty. *Central Union Gas Co. v. Browning* (1911), 146 App. Div. 783, 131 N. Y. Supp. 464.

Contract of conditional sale under form of lease; effect of failure to file contract.—Although gas ranges were installed in an apartment house under an agreement in the form of a lease whereby the vendee was required to pay "rent," the agreement in law amounted to a contract of conditional sale if the vendee upon paying the contract price was to be entitled to a bill of sale from the vendor. One who purchased the building on the foreclosure of a mortgage obtained a good title as against the conditional vendor, although the vendee had not fully paid the purchase price, where the contract was not filed and no notice of it was given to the mortgagee or to the bidders at the foreclosure sale. *Central Union Gas Co. v. Browning* (1911), 146 App. Div. 783, 131 N. Y. Supp. 464.

Conditional sale of pianos.—Assuming that a vendor of a piano sold under a contract of conditional sale was not obliged under chapter 315 of the Laws of 1884, as amended, to file a copy of the contract or deliver a duplicate thereof to the

purchaser in order to protect his title as against a pledgee of the property, the Lien Law (Laws of 1897, chap. 418) made it necessary for him to do so in order to protect his title to property sold under such a contract prior to its passage as against a pledgee whose pledge was acquired after the passage of the statute of 1897. Thus, where a person boarding with his wife and children leaves with the boarding-house keeper a piano which his wife had purchased under a contract of conditional sale, and in which he had no interest, together with other furniture, telling the boarding-house keeper that the piano and furniture should remain with her until his debt for board was paid, and the wife never questions the transaction, it is a necessary implication in the absence of evidence to the contrary that the piano is pledged with the consent of the wife, or that the husband had such an interest in the property that he had the right to pledge it. Hence, as between the boarding-house keeper and the conditional vendor, the former is a pledgee of the piano within the meaning of the General Lien Law of 1897. *Leonard v. Harris* (1911), 147 App. Div. 458, 131 N. Y. Supp. 909.

§ 65. Sale of property retaken by vendor.

Waiver of rights under this section by an executory agreement is against public policy. *Hurley v. Allman Gas Engine & Machine Co.* (1911), 144 App. Div. 300, 129 N. Y. Supp. 14.

§ 96. Implied warranties of quality.

An express warranty survives acceptance, but an implied warranty does not. It is, therefore, the duty of a vendee of merchandise to exercise reasonable diligence in ascertaining its grade and condition and to reject it promptly if it proves to be unmerchantable. *Ferguson v. Netter* (1912), 204 N. Y. 505.

POOR LAW.

(L. 1909, ch. 46.)

§ 3. County superintendents of the poor.—*Subdivision 14, amended by L. 1912, ch. 75, in effect Mch. 26, as follows:*

14. Pay over to the county treasurer on the first day of each month all moneys received by him from any source in his official capacity, or otherwise received by him and belonging to the county, since the date of the preceding payment, and make payments which he is authorized to make under this chapter only by orders drawn on the county treasurer, payable to the person entitled thereto and showing upon the face thereof the purpose for which the order is given.

§ 23. Temporary relief to persons who cannot be removed to almshouse.

The question of the propriety of giving relief is confined to the discretion of the poor authorities and, if they grant relief, it is presumed they have made such investigation as they deemed necessary and have determined the right of the party examined to such relief. *Matter of Chamberlain (1911), 73 Misc. 256, 132 N. Y. Supp. 681.*

§ 30. Hospital accommodations for indigent persons.—*Subdivision 2, amended by L. 1912, ch. 309, in effect Apr. 15, 1912, as follows:*

2. In all counties of this state in which there are not adequate hospital accommodations for indigent persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it shall be the duty of county superintendents of the poor, upon the certificate of a physician approved by the board of supervisors, or of the overseers of the poor in the several towns of such counties, upon the certificate of a physician approved by the supervisor of the town, as their jurisdiction over the several cases may require, to send all such indigent persons requiring medical or surgical care and treatment to the nearest hospital, the incorporation and management of which have been approved by the state board of charities provided transportation to such hospital can be safely accomplished. The charge for the care and treatment of such indigent persons in such hospitals, as herein provided, shall not exceed one dollar per day for each person, except that in the counties of Westchester, Nassau and Suffolk a charge of not to exceed two dollars per day may be made therefor, which shall be paid by the several counties or towns from which such persons are sent, and provision for which shall be made in the annual budgets of such counties and towns.

Settlement of minors.—Minors who reside with their father for more than a year in the same town, in a county in which the several towns support their own poor, gain a settlement in that town; and where, after removing to a new town in the same county and before gaining a settlement there, they require and receive relief as poor persons, the expense of their relief is chargeable to the town from which they removed. *Matter of Chamberlain (1911), 73 Misc. 256, 132 N. Y. Supp. 681.*

L. 1912, ch. 306.

Burial of soldiers, sailors or marines.

§§ 40, 84.

§ 40. Settlements, how gained.

Application of provisions relating to gaining a settlement in a city or town is not limited to poor persons. *Matter of Chamberlain* (1911), 73 Misc. 256, 132 N. Y. Supp. 681.

§ 84. Burial of soldiers, sailors or marines.—The board of supervisors in each of the counties shall designate some proper person or authority, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred the body of any honorably discharged soldier, sailor or marine, who has served in the military or naval service of the United States, or the body of the wife or widow of any soldier, sailor or marine, married to him previous to nineteen hundred and ten, who shall die such widow, and who shall hereafter die without leaving sufficient means to defray his or her funeral expenses, but such expenses shall in no case exceed fifty dollars. If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charge therefor, such sum shall be paid by the county treasurer, upon due proof of the claim, and of the death and burial of the soldier, sailor or marine, or of the wife or widow of such soldier, sailor or marine, to the person so conducting such burial. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased. (*Amended by L. 1912, ch. 306, in effect Apr. 13, 1912.*)

Interment of the body of any honorably discharged soldier, sailor or marine who dies without leaving sufficient means to defray his funeral expenses, is a proper county charge where the only property of such veteran who died leaving a widow was fifty-four dollars in money. Under such circumstances he did not die leaving sufficient means to defray his funeral expenses, for on his death the money belonged to his widow. *People ex rel. Brown v. Pendergast* (1911), 146 App. Div. 714, 131 N. Y. Supp. 441.

The funeral expenses of the destitute widow of an honorably discharged sailor are a county charge under this section. Where the funeral was conducted by a friend of the deceased, the county treasurer, upon due proof of the death and burial, is authorized to pay the expenses without prior audit by the board of supervisors. *Matter of Calhoun v. MacArthur* (1912), 75 Misc. 192.

PRISON LAW.

(L. 1909, ch. 47.)

§ 21. **Bertillon system.**—The superintendent of state prisons shall cause the prisoners in the state prisons to be measured and described in accordance with the system commonly known as the Bertillon method for identification of criminals. The said superintendent shall cause such measurements to be made by a person or persons in official service of the state, and shall prescribe rules and regulations for keeping accurate records of such measurements at such prisons and in duplicate at his office in Albany and for classifying and indexing the same. It shall also be the duty of the officials having charge of the New York state reformatory at Elmira, and the Eastern New York reformatory at Napanoch, and of the penitentiaries in which prisoners shall be confined, or shall be hereafter received under sentence of thirty days or more, to cause said prisoners to be measured and described in accordance with said Bertillon system by such person or persons in the official service of the state or of any such county or institution as may be designated by the superintendent of state prisons for the purpose, which measurements shall be made according to the rules and methods prescribed by the superintendent of state prisons. And it shall be the duty of the officials in charge of such reformatories and penitentiaries to cause duplicate records of such measurements to be transmitted to the superintendent of state prisons, to be by him indexed and classified according to said Bertillon system.

The superintendent of state prisons is also authorized to file, index and classify Bertillon descriptive cards received from other sources. The necessary expenses incurred by the superintendent of state prisons in indexing and classifying prisoners, as provided in this section shall, unless otherwise provided, be payable by the treasurer from the moneys appropriated for the maintenance and support of the several state prisons, on the warrant of the comptroller, and on bills approved by the superintendent of state prisons, but such expenses shall not exceed seven thousand dollars per year. (*Amended by L. 1912, ch. 106, in effect Apr. 3, 1912.*)

§ 94. **Salaries.**—The salary of the matron shall be fixed by the superintendent of state prisons, but shall not exceed twelve hundred dollars per annum. Each assistant matron shall board and lodge in the state prison and shall receive as compensation, in addition to such board and lodging, not to exceed the sum of four hundred and twenty dollars per annum. The storekeeper shall receive a salary not to exceed one thousand dollars per annum. Guards including those now in office shall receive annual salaries at the following rates: For the first year's service, six hundred and sixty dollars; for the second year's service, seven hundred and forty dollars; for the third year's service, eight hundred and twenty dollars; and

L. 1912, chs. 50, 107.

Salaries; products of labor.

§§ 114, 115, 171, 193.

thereafter, nine hundred dollars. Such salaries shall be paid monthly and if not fixed by this section shall be fixed and rated by the superintendent of state prisons. (*Amended by L. 1912, ch. 105, in effect Apr. 3, 1912.*)

§ 114. Compensation of other officers.—The superintendent of state prisons shall, from time to time, prescribe the compensation of the other officers of said prisons, but the compensation so fixed and prescribed for the following officers in each of such prisons shall not in any case exceed the rate of an annual salary, as follows: To the principal keeper, two thousand dollars; to the kitchen-keeper, store-keeper, hall-keeper, yard-keeper and sergeant of the guard, each twelve hundred dollars; to the state detective at Sing Sing prison, eighteen hundred dollars. The compensation of guards and attendants in prison hospitals shall be as follows: For the first year's service, eight hundred dollars; for the second year's service, nine hundred dollars; for the third year's service, ten hundred dollars; for the fourth year's service, eleven hundred dollars; for the fifth year's service, and thereafter, twelve hundred dollars. (*Amended by L. 1912, ch. 50, in effect June 1, 1912.*)

§ 115. Salaries to be paid monthly.—The salaries of the officers specified in sections one hundred and eleven, one hundred and twelve, one hundred and thirteen, and one hundred and fourteen shall be payable at the end of each month. None of such officers mentioned shall receive any perquisites or emoluments for his services other than the compensation provided therefor by law, except that the principal keeper at Sing Sing prison, in addition to his salary, shall be provided with a house connected with the prison, but separate therefrom, and with household furniture, fuel and lights therefor and rations from the prison stores for himself and his family. (*Amended by L. 1912, ch. 107, in effect Apr. 3, 1912.*)

§ 171. Prisoners to be employed; products of labor of prisoners.

Eight-hour day.—The number of hours required of prisoners confined in penitentiaries and reformatories as well as state prisons, is limited to eight hours per day. Rept. of Atty. Genl., Feb. 16, 1912.

Work on Sunday.—All necessary cooking, kitchen work and similar work which must be done every day in the State Prisons may legally be done on Sundays and legal holidays by inmates who freely and voluntarily consent to do such work. Rept. of Atty. Genl. (1911), Vol. 2, p. 613.

Validity of judgment providing for imprisonment "at hard labor."—A judgment convicting a defendant of petit larceny not charged as a first offense is not illegal and excessive because it includes a provision that he be imprisoned "at hard labor." Such a provision does not increase the punishment or render the judgment void, nor can it be reviewed on habeas corpus, for section 171 of the Prison Law requires that so far as practical all prisoners, physically fit, in state prisons and reformatories be employed at hard labor eight hours a day. *People ex rel. Gairvance v. Platt* (1911), 148 App. Div. 579.

§ 193. Deposits by agent and warden in banks.

Money derived from a sale of horses originally estimated and paid for from the

§§ 211, 211-a, 214, 218, 230.

Sentences; parole.

L. 1912, chs. 79, 286.

capital fund at Clinton Prison, may be turned into that fund. Rept. of Atty. Genl., Mch. 2, 1912.

§ 211. Prisoners subject to parole.

A prisoner previously convicted of a state prison offense is not eligible for parole. Rept. of Atty. Genl., Feb. 29, 1912.

An absolute discharge can not be granted under this section to a man serving a definite sentence. Rept. of Atty. Genl., Mch. 11, 1912.

§ 211-a. Parole of certain indeterminates.

The whole scheme of the statute is to reward prisoners for conduct within the prison and not for anything that occurred prior to coming there. The charge of having committed a crime before being received at the prison is nowhere recognized in the law as a sufficient reason for withholding the commutation. Thus, the State Board of Parole should not refuse to parole a prisoner, otherwise entitled to parole, upon the ground that there is a warrant on file at the prison for him for the commission of a crime prior to the sentence under which he is serving. Rept. of Atty. Genl. (1911), Vol. 2, p. 689.

§ 214. Release on parole of prisoners on indeterminate sentence.

A person confined under two sentences, the first indeterminate and the second definite, is not entitled to be paroled at the expiration of the minimum term of the first sentence so that he may immediately begin the serving of the second sentence. Rept. of Atty. Genl., Jan. 26, 1912.

§ 218. Absolute discharge of paroled prisoner.—If it shall appear to said board of parole that there is reasonable probability that any prisoner so on parole will live and remain at liberty without violating the law, and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then said board shall issue to said prisoner an absolute discharge from imprisonment upon such sentence, which shall be effective therefor. (*Amended by L. 1912, ch. 286, in effect Apr. 12, 1912.*)

§ 230. Definite sentence; indeterminate sentence; commutation.—A sentence to imprisonment in a state prison for a definite fixed period of time is a definite sentence. A sentence to imprisonment in a state prison having minimum and maximum limits fixed by the court is an indeterminate sentence. Every convict confined under a definite sentence in any state prison or penitentiary in this state, on a conviction of a felony or misdemeanor, whether male or female, where the terms or term equal or equals six months exclusive of any term which may be imposed by the court or by statute as an alternative to the payment of a fine, or a term of life imprisonment, may earn for himself or herself a commutation or diminution of his or her sentence or sentences as follows, namely, five days for each month of a period less than a year, two months for the first year, two months for the second year, four months each for the third and fourth years, and five months for each subsequent year. (*Amended by L. 1912, ch. 79, in effect Sept. 1, 1912.*)

§ 289. Compensation of officers and employees in state reformatories.—

Except as provided in this section the annual compensation of the several officers, keepers and employees, of both said institutions, shall be fixed by the state board of managers, not exceeding the maximum sums fixed under section seventeen of the state finance law. The guards, store-keepers, trade instructors and book-keepers employed in both such institutions shall receive the same compensation allowed by law to guards in the state prisons. The compensation of clerks in both such institutions shall be as follows: For the first year's service, six hundred dollars; for the second year's service, seven hundred and twenty dollars; for the third year's service, eight hundred and forty dollars; for the fourth year's service, and thereafter, nine hundred and sixty dollars. Maintenance and supplies may be allowed to such officers, guards, keepers and employees in the discretion of the board of managers as a part of said compensation. (*Amended by L. 1912, ch. 50, in effect June 1, 1912.*)

When prisoner not entitled to further commutation.—Where the Governor has commuted the sentence of a prisoner and does not direct that the sentence as commuted by him should be subject to further commutation in accordance with the Prison Law, such prisoner is not entitled to any further commutation of his sentence by virtue of said law. Rept. of Atty. Genl. (1911), Vol. 2, p. 638.

§ 321. Convicts in penitentiary to be confined at labor.

Employment of prisoners for more than eight hours prohibited.—Neither this section nor the general power given the authorities of penitentiaries to adopt rules for the government and discipline of the institutions under their charge, should be considered as permitting rules to be adopted in conflict with the general provisions of the law relating to the same subject. All reformatories and penitentiaries as well as state prisons, are included in the provisions of section 171 of the Prison Law, and that section prohibits the employment of prisoners in penal institutions for more than eight hours per day. Rept. of Atty. Genl., Feb. 16, 1912.

PROCREATION.

Operations for prevention; Public Health L., §§ 350-353.

PUBLIC BUILDINGS LAW.

(L. 1909, ch. 48.)

§ 64. Admission to home.—Every honorably discharged soldier or sailor who served in the army or navy of the United States during the late rebellion, the Spanish-American war or the insurrection in the Philippines, who enlisted from the state of New York, or who shall have been a resident of this state for one year preceding his application for admission, and who shall need the aid or benefit of such home in consequence of physical disability or other cause within the scope of the regulations of the board, shall be entitled to admission thereto, subject to the conditions, limitations and penalties prescribed by the rules and regulations of the board, provided preference of admission be given to veterans of the civil war in case of lack of accommodations. The board of trustees shall require an applicant for admission to such home to file with the application for admission his own affidavit of residence and such affidavit shall be received as prima facie evidence of the residence of such applicant in any action or proceeding against the county of his residence, in which the residence of such applicant shall be material. (*Amended by L. 1911, ch. 577 and L. 1912, ch. 190, in effect Apr. 5, 1912.*)

PUBLIC HEALTH LAW.

(L. 1909, ch. 49.)

§ 20. Local boards of health.

A village is not liable for the expenses of a health officer in successfully defending a suit brought against him for alleged willful, careless and negligent acts committed by him as health officer, nor can the village pay the same. Rept. of Atty. Genl. (1911), Vol. 2, p. 556.

§ 22. Vital statistics.

Village clerk as registrar.—A village clerk is not required to act as registrar of vital statistics, without appointment or designation by the village board of health. Rept. of Atty. Genl. (1911), Vol. 2, p. 622.

§ 30. Assessing expense upon property benefited.

Expense of caring for non-resident stricken with contagious disease.—Where a person coming from another state and not having yet gained a residence here, who is dependent upon his daily labor for the support of himself and his family but who has never been a public charge, is stricken with a contagious disease and quarantined by the health authorities in pursuance of the provisions of the Public Health Law, and being unable to work is supplied with necessaries for the care and support of himself and family until he recovers from his disease, upon the order or direction of the town board of health to charge the same to the town, the cost of such necessaries is a proper charge against the town and should be levied, collected and paid in the same manner as other town charges. *Matter of Bellows v. Board of Supervisors* (1911), 73 Misc. 566.

§ 121. Residence and general powers.—The health officer for the port of New York shall reside at quarantine. He shall have the general supervision and control of the quarantine establishment, and the care and treatment of the sick thereat, and shall carry into effect the provisions of this and the preceding article. He shall, in the presence of immediate danger, of which he shall be the judge, take the responsibility of applying such additional measures as may be deemed indispensable for the protection of the public health. He may cause to be sold at public auction any personal property connected with the quarantine establishment or otherwise subject to his jurisdiction, which he deems useless. The proceeds of such sale after deducting the necessary expense thereof shall be paid by him into the state treasury. (*Amended by L. 1909, ch. 375 and L. 1912, ch. 109, in effect Apr. 3, 1912.*)

§ 161. Qualifications.

See *World's Dispensary Medical Association v. Pierce* (1911), 203 N. Y. 419.

§ 166. Medicine; admission to examination.—*Subdivision 5, amended by L. 1912, ch. 141, in effect Jan. 1, 1913, as follows:*

5. Has either received the degree of bachelor or doctor of medicine from some registered medical school, or a diploma or license conferring

full right to practice medicine in some foreign country unless admitted conditionally to the examinations as specified above, in which case all qualifications, including the full period of study, the medical degree and the final examinations in surgery, obstetrics, gynecology, pathology, including bacteriology, and diagnosis, must be met. The degree of bachelor or doctor of medicine shall not be conferred in this state before the candidate has filed with the institution conferring it the certificate of the regents that before beginning the first annual medical course counted toward the degree, unless matriculated conditionally as hereinafter specified, he had either graduated from a registered college or satisfactorily completed a full course in a registered academy or high school; or had a preliminary education considered and accepted by the regents as fully equivalent; or held a regents' medical student certificate; or passed regents' examinations securing sixty academic counts, as provided in the rules of the regents, or their full equivalent, before beginning the first annual medical course counted toward the degree, unless admitted conditionally as hereinafter specified. A medical school may matriculate conditionally a student deficient in not more than one year's academic work or fifteen counts of the preliminary education requirement, provided the name and deficiency of each student so matriculated be filed at the regents' office within three months after matriculation, and that the deficiency be made up before the student begins the second annual medical course counted toward the degree; provided, however, that on and after the taking effect of this act, medical schools shall not matriculate conditionally students who are deficient in any part of the preliminary educational requirements specified in this subdivision.

§ 191. State dental society.—The dental society of the state of New York is continued, and shall be composed of eight delegates from each district society, divided into four classes of two delegates each, to be elected annually, and of two delegates from each incorporated dental school of the state to be elected annually. The state dental society shall annually meet on the second Wednesday of May, or at such other time and at such place as may be determined on in the by-laws of the society or by resolution, at the preceding annual meeting. Twenty members shall be a quorum. The society shall elect annually a president, vice-president, secretary and treasurer, who shall hold their offices for one year, and until others shall be chosen in their places, and may elect permanent members at any annual meeting from among members of district societies of the state, who shall have all the privileges of delegate members; the number of permanent members so elected shall be fixed by the by-laws of the society. The society may elect honorary members from any state or country not eligible to regular membership, who shall not be entitled to vote or hold any office in the society. (*Amended by L. 1912, ch. 171, in effect Apr. 5, 1912.*)

L. 1912, ch. 178.

Veterinary licenses.

§§ 219, 271.

§ 219. **Licenses.**—On receiving from the state board an official report that an applicant has successfully passed the examination and is recommended for license, the regents shall issue to him, if in their judgment he is duly qualified therefor, a license to practice veterinary medicine. Every license shall be issued by the university under seal and shall be signed by each acting veterinary medical examiner of the board and by the officer of the university who approved the credential which admitted the candidate to examination, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, preliminary and veterinary medical education and all other matters required by law, and that after full examination he has been found duly qualified to practice. Applicants examined and licensed before July first, eighteen hundred and ninety-seven, by other state examining boards registered by the regents as maintaining standards not lower than those provided by this article, and applicants who matriculated in a New York state veterinary medical school before July first, eighteen hundred and ninety-six, and who received the veterinary degree from a registered veterinary medical school before July first, eighteen hundred and ninety-seven, may without further examination, on payment of ten dollars to the regents, and on submitting such evidence as they may require, receive from them an indorsement of their license or diplomas conferring all rights and privileges of a regents' license issued after examination. If any person, whose registration is not legal or who is not registered because of some error, misunderstanding or unintentional omission, shall submit to the state board of veterinary medical examiners or the regents of the university of the state of New York, satisfactory proof that he had all requirements prescribed by law at the time required for registration and was entitled to be legally registered, he may, on unanimous recommendation of the state board of veterinary medical examiners, or by action of the board of regents, receive from the regents under seal a certificate of the facts which may be registered by any county clerk and shall make valid the previous imperfect registration, and such certificate shall include the date on which such person could or should have registered, and his registration shall be deemed to have been valid and corrected from that date. Before any license is issued it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted in the license. This record shall be open to public inspection, and in all legal proceedings shall have the same weight as evidence that is given to a record of conveyance of land. (*Amended by L. 1912, ch. 178, in effect Apr. 5, 1912.*)

§ 271. **Eligibility to certificate without examination.**—All chiropradists practicing as such within the state of New York, on the third day of June, eighteen hundred and ninety-five, shall receive from the board of examiners now in office upon application, a certificate or diploma under the hands of said examiners and the seal of said society, which certificate shall entitle

the person to whom it is issued to practice chiropody within this state, upon first filing the same with the county clerk of the county in which such person resides, or if such person be not a resident of this state, with the county clerk of the county in which such person has his office within this state, provided, however, that same be applied for on or before July first, nineteen hundred and twelve. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 272. **Examinations.**—On and after September first, nineteen hundred and twelve, no person not heretofore legally authorized to practice chiropody in the state of New York shall be permitted to engage in such practice unless he shall have been duly licensed so to do by the regents of the university of the state of New York, on the recommendation of the state board of medical examiners.

The regents shall admit to examinations any candidate who pays a fee of twenty-five dollars and submits evidence verified by oath and satisfactory to the regents that he is

- (a) More than twenty-one years of age;
- (b) Is of good moral character;
- (c) Has a preliminary education satisfactory to the requirements of the board of regents;
- (d) Has graduated from a school of chiropody maintaining a standard satisfactory to the regents.

Applicants from other states and countries, presenting credentials accepted as satisfactory by the regents and showing that they have been legally practicing chiropody for five years, may be admitted to a licensing examination in chiropody.

A school of chiropody shall not matriculate a student whose academic education is not equivalent to the standard required by the board of regents.

The state board of medical examiners, or a committee thereof, shall submit to the regents as required, lists of suitable questions for examination in anatomy and physiology of the feet, therapeutics, chemistry, minor surgery and bandaging. From these lists, the regents shall prepare question papers for all these subjects, which at any examination shall be the same for all candidates.

Examinations for licenses in chiropody shall be given at the medical examinations whenever and wherever held in this state, in accordance with the regents' rules, and shall be exclusively in writing and in English. Such examinations shall be conducted by a regents' official, who shall not be one of the state medical examiners. At the close of each examination, the regents' official in charge shall deliver the questions and answer papers to the state board of medical examiners, or to its duly authorized committee, who, without unnecessary delay, shall examine and mark the answers and transmit to the regents an official report signed by the secretary of the

L. 1912, ch. 199.

Chiropody.

§§ 273, 277.

state board of medical examiners, stating the standing of each candidate in each branch and his general average, such report shall include the questions and answers and shall be filed in the public records of the university. If a candidate fails on first examination, he may, after not less than six months' further study, have a second examination without fee. If the failure be from illness or other cause satisfactory to the regents, they may waive the required six months' study.

On receiving from the state board of medical examiners an official report that an applicant has successfully passed the examination and is recommended for license, the regents shall issue a license to practice chiropody in keeping with the definition of chiropody, as given in this article. Every license shall be issued by the university under seal and shall be signed by each acting examiner in chiropody, by the secretary of the state board of medical examiners and by the officer of the university who approved the credentials which admitted the candidate to examination and shall state that the licensee has given satisfactory evidence of fitness as to age, character, preliminary and professional education and of any other matters required by law, and that after full examination he has been found properly qualified to practice chiropody. If any person whose registration is not legal, because of some error, misunderstanding or unintentional omission, shall submit satisfactory proof that he had all requirements prescribed by law, at the time of his imperfect registration or irregular practice and was entitled to be legally registered, he may, on unanimous recommendation of the state board of medical examiners, receive from the regents, under seal, a certificate of the facts which may be registered by any county clerk and shall make valid the previous imperfect registration or irregular practice. Before any license is issued, it shall be numbered and recorded in a book kept in the regents' office and its number shall be noted in the license and a photograph of the licensee filed with the records. This record shall be open to public inspection and in all legal proceedings shall have the same weight as evidence as is given to a record of conveyance of land. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 273. **Expenses.**—The fees derived from the operation of this article shall be paid into the state treasury, and the legislature shall annually appropriate therefrom for the education department an amount sufficient to pay all proper expenses incurred pursuant to this article. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 277. **Falsely and knowingly claiming to be a member of such society, a misdemeanor.**—Any person who shall knowingly and falsely and with intent to deceive the public, claim or pretend to be a member of said pedic society, not being such member, shall be deemed guilty of a misdemeanor and punished accordingly. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 278. **Practicing without registering prohibited.**—Every license to practice chiroprody before the licensee begins practicing thereunder shall be registered in a book kept in the clerk's office of the county where such practice is to be carried on, with the name, the residence, the place and date of birth, and the source, the number and date of his license to practice. Before registering, each licensee shall file, to be kept in a bound volume in a county clerk's office, an affidavit of the above facts, and also that he is the person named in such license and had before receiving the same complied with all requirements as to attendance and amount of study and examinations required by law and the rules of the university as preliminary to the conferment thereof; that no money was paid for such license except the regular fees paid by all applicants therefor; that no fraud, misrepresentation or mistake in any material regard was employed by any one or occurred in order that such should be conferred. Every license, or if lost, a copy thereof, legally certified so as to be admissible as evidence, or a duly attested transcript of the record of its conferment shall, before registering, be exhibited to the county clerk, who, only in case it was issued or indorsed as a license under seal by the regents, shall indorse or stamp on it the date and his name, preceded by the words "Registered as authority to practice chiroprody in the clerk's office of county." The clerk shall thereupon give to every chiroprodist so registered, a transcript of the entries in the register with a certificate, under seal, that he has filed the prescribed affidavit. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 279. **Person not entitled to register unless holding a license.**—No person shall be entitled to register as a chiroprodist unless he or she shall hold the license provided for in section two hundred and seventy-two of this article. Every unrevoked certificate and indorsement of registry made as provided in this article, shall be presumptive evidence in all courts and places that the person named therein is legally registered. After September first, nineteen hundred and twelve, no person shall register any authority to practice chiroprody unless it has been issued or indorsed as a license by the regents. No such registration shall be valid unless the authority registered constituted at the time of the registration a license under the laws of the state then in force. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 280. **Duty of county clerk.**—The county clerk of each county shall provide a book to be known as the register of chiroprodists, in which shall be recorded the matters in section two hundred and seventy-eight of this article set forth, and shall thereupon give to every registrant a transcript of the entries in the register with a certificate under seal that he has filed the prescribed affidavit. Every applicant who shall have complied with the foregoing provisions and shall be admitted to registration shall pay to the clerk of said county the sum of one dollar, which shall be re-

L. 1912, ch. 199.

Chiropody.

§ 281.

ceived as full compensation for such registration, affidavit and certificate. A practicing chiropodist having registered a lawful authority to practice chiropody in one county and removing such practice or a part thereof to another county or regularly engaged in practicing or opening an office in another county, shall show or send by registered mail to the clerk of such other county his certificate of registration. If such certificate clearly shows that the original registration was under the provisions of any law now or heretofore in effect, the clerk shall thereupon register the applicant in the latter county on receipt of a fee of twenty-five cents, and shall stamp or indorse on such certificate the date and his name preceded by the words "Registered also in county," and return the certificate to the applicant. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 281. **Penalty for violations or neglect to comply with this article.**—Any person who shall present to any county clerk for the purpose of registration, any license which has been fraudulently obtained, or shall obtain any license under this article by any false or fraudulent statement or representation, or shall practice chiropody or any branch thereof within this state without conforming to the requirements of this article, or shall otherwise violate or neglect to comply with any of the provisions of this article, shall be guilty of a misdemeanor, and shall on conviction, for each and every offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for a term not less than thirty days and not more than one year, or by both fine and imprisonment. Any person who shall practice chiropody under a false or assumed name or shall falsely personate another practitioner or former practitioner of a like or different name, shall likewise be guilty of a misdemeanor and punished accordingly. The regents may revoke the license of a chiropodist or annul his registration or do both in any of the following cases:

(a) Conviction of a felony; (b) Fraud or deceit in practice; (c) If the practitioner be a habitual drunkard or be habitually addicted to the use of morphine, opium, cocaine, or other drugs having a similar effect; (d) If the practitioner undertakes or engages in any practice beyond the privileges and rights accorded to him in his license; (e) If his license has been obtained through any false or fraudulent representations or actions upon his part.

Proceedings for the revocation of a license or the annulment of a registration shall be begun by filing the written charge or charges against the accused. These charges may be preferred by any person or corporation, or the regents may on their own motion direct the executive officer of the board of regents to prefer said charges. Said charges shall be filed with the executive officer of the board of regents and a copy thereof shall be filed with the secretary of the board of medical examiners, which latter

§ 310.

Vaccination of school children.

L. 1912, ch. 199.

body shall designate a committee, of their number, to hear and determine said charges. The time and place for the hearing of said charges shall be fixed by said committee as soon as convenient, and a copy of the charges, together with a notice of the time and place when they will be heard and determined, shall be served upon the accused or his counsel at least ten days before the date actually fixed for such hearing. Service shall be in person or by publication and shall indicate a definite time and place for a hearing. At said hearing the accused shall have the right to cross-examine the witnesses against him and to produce witnesses in his defense and to appear personally or by counsel. The said committee shall make a written report of its findings and recommendations to be signed by all its members and the same shall be forthwith transmitted to the executive officer of the board of regents. If the said committee shall unanimously find that said charges or any of them are sustained and shall unanimously recommend that the license of the accused be revoked or his registration be annulled, the regents may thereupon, in their discretion, revoke said license or annul said registration, or do both. If the regents annul such registration, they shall forthwith transmit to the clerk of the county or counties in which said accused is registered as a chiropodist, a certificate under their seal certifying that such registration has been annulled, and said clerk shall, upon receipt of such certificate, file the same and forthwith mark said registration "Annulled." Any person who shall practice chiropody, after his registration has been marked "Annulled," shall be deemed to have practiced chiropody without registration, and in violation of this article. But nothing in this article shall be construed to prohibit any duly and legally licensed or authorized physician or surgeon from practicing chiropody or any branch thereof. When any prosecution under this article is made on the complaint of "The pedic society of the state of New York," the fines when collected shall be paid to the said "The pedic society of the state of New York," and any excess of the amount of such fines over the expenses incurred by the said society in enforcing the law of this state relating to the practice of chiropody, shall be paid at the end of the year by the said society to the treasurer of the state of New York for the common school fund. (*Amended by L. 1912, ch. 199, in effect Sept. 1, 1912.*)

§ 310. Vaccination of school children.

Failure of parent to cause child to be vaccinated and to attend school.—Where the mother of a girl ten years old, who was excluded from school because she was not vaccinated, refused to allow her to be vaccinated and continued to send her to the schoolhouse for several days, although she was not admitted, there is probable cause to believe the mother guilty of a violation of section 624 of the Education Law, and she cannot recover in an action for malicious prosecution against an attendance officer who laid an information alleging that she had not caused the child to attend upon instruction as required by law; that the child had been absent from instruction nine days without legal excuse and that the mother had not presented proof that she was unable to compel the child to attend. *Shappee v. Curtis* (1911), 142 App. Div. 155, 127 N. Y. Supp. 33.

L. 1912, ch. 445.

Prevention of procreation.

§§ 316, 350, 351.

§ 316. Cadavers.

Disposal of body of executed criminal.—The body of an executed criminal must be buried in the method prescribed by the provisions of section 507 of the Code of Criminal Procedure. There is no authority in law for the delivery of such a body or any portion thereof to any person, except in accordance with the provisions of this section: Thus, parts of a body cannot be delivered to scientists for the purpose of investigation. Rept. of Atty. Genl., Feb. 1, 1912.

Article 19, §§ 350, 351 Laws repealed.—*Renumbered Art. 20, §§ 360, 361 by L. 1912, ch. 445, in effect Apr. 16, 1912.*

ARTICLE 19.

[Article added by L. 1912, ch. 445, in effect Apr. 16, 1912.]

OPERATIONS FOR THE PREVENTION OF PROCREATION.

Section 350. Board of examiners; compensation and expenses.

351. General powers and duties of the board; persons to be operated upon.

352. Appointment of counsel to persons to be operated upon.

353. Unauthorized and illegal operations.

§ 350. Board of examiners; compensation and expenses.—Immediately after the passage of this act, the governor shall appoint one surgeon, one neurologist and one practitioner of medicine, each with at least ten years' experience in the actual practice of his profession, for a term of five years, to be known as the board of examiners of feeble-minded, criminals and other defectives, which board is hereby created. The compensation of the members of such board shall be ten dollars per diem for each day actually engaged in the performance of the duties of the board, and their actual and necessary traveling expenses. Any vacancies occurring in said board shall be filled by appointment of the governor for the unexpired term. (*Added by L. 1912, ch. 445, in effect Apr. 16, 1912.*)

§ 351. General powers and duties of the board; persons to be operated upon.—It shall be the duty of the said board to examine into the mental and physical condition and the record and family history of the feeble-minded, epileptic, criminal and other defective inmates confined in the several state hospitals for the insane, state prisons, reformatories and charitable and penal institutions in the state, and if in the judgment of the majority of said board procreation by any such person would produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility and there is no probability that the condition of any such person so examined will improve to such an extent as to render procreation by any such person advisable, or if the physical or mental condition of any such person will be substantially improved thereby, then said board shall appoint one of its members to perform such operation for the prevention of procreation as shall be decided by said board to be most effective.

The criminals who shall come within the operation of this law shall be those who have been convicted of the crime of rape or of such succession of

§§ 352, 353.

Prevention of procreation.

L. 1912, ch. 445.

offenses against the criminal law as in the opinion of the board shall be deemed to be sufficient evidence of confirmed criminal tendencies. (*Added by L. 1912, ch. 445, in effect Apr. 16, 1912.*)

§ 352. **Appointment of counsel to person to be operated upon.**—The board of examiners shall apply to any judge of the supreme court or county judge of the county in which said person is confined, for the appointment of counsel to represent the person to be examined. Said counsel to act at a hearing before the judge and in any subsequent proceedings and no order made by said board shall become effective until five days after it shall have been filed with the clerk of the court and a copy shall have been served upon the counsel appointed to represent the person examined and proof of service of said copy of the order to be filed with the clerk of the court. All orders made under the provisions of this act shall be subject to review by the supreme court or any justice thereof, and said court may upon appeal from any order grant a stay which shall be effective until such appeal shall have been decided. The judge of the court appointing any counsel under this act may fix the compensation to be paid him. No surgeon performing an operation under the provisions of this act shall be held to account therefor. The record taken upon the examination of every such inmate signed by the said board of examiners shall be preserved by the institution where said inmate is confined and one year after the performance of the operation the superintendent or other administrative officer of the institution wherein such inmate is confined shall report to the board of examiners the condition of the inmate and the effect of such operation upon such inmate, and a copy of the report shall be filed with the record of the examination. (*Added by L. 1912, ch. 445, in effect Apr. 16, 1912.*)

§ 353. **Unauthorized and illegal operations.**—Except as authorized by this act, every person who shall perform, encourage, assist in or otherwise permit the performance of the operation for the purpose of destroying the power to procreate the human species or any person who shall knowingly permit such operation to be performed upon such person unless the same shall be a medical necessity, shall be guilty of a misdemeanor. (*Added by L. 1912, ch. 445, in effect Apr. 16, 1912.*)

PUBLIC LANDS LAW.

(L. 1909, ch. 50.)

§ 60. **Persons entitled to petition for release.**—A petition for the release to the petitioner of any interest in real property escheated to the state by reason of the failure of heirs, or the incapacity, for any reason except infancy or mental incompetency, of any of the petitioner's alleged predecessors in interest to take such property, by devise or otherwise, or to convey the same, or by reason of the alienage of any person, who but for such alienage would have succeeded to such interest, may be presented to the commissioners of the land office within forty years after such escheat. Such petition may be presented:

1. By any person who would have succeeded to such interest but for his alienage or the alienage of another person, or
2. By the surviving husband, widow, stepfather, stepmother or adopted child of the person whose interest has so escheated, or
3. By the purchaser at a judicial sale or sheriff's sale on execution, or
4. By an heir, devisee, assignee, grantee, immediate or remote, or executor of any person, who but for his death, assignment or grant could present such petition, or the alleged grantee of any person or of any association or body, whether incorporated or not, who or which would have succeeded by devise or otherwise to the title of such person but for his alienage or a legal incapacity to take or convey the property so escheated.

Such petition shall be verified by each petitioner in the same manner as a pleading in a court of record may be verified, and shall allege:

1. The name and residence of each person owning any interest in such real property immediately prior to the escheat;
2. The name and residence of each petitioner and the circumstances which entitle him to present such petition;
3. The name and place of residence of every person who would have succeeded to any such interest but for his alienage or the alienage of another or any other rule of legal incapacity hereinabove mentioned affecting an attempted transfer of such interest to such person or to or by any of his alleged predecessors in interest;
4. The description and value, at the date of the verification of the petition, of such real property sought to be released;
5. The description and value, at the date of the verification of the petition, of all the property of every such owner, which shall have escheated to the people of the state by reason of failure of heirs or alienage and which shall not then have been released or conveyed by the state;
6. The name and residence of each person having or claiming an interest in such real property at the date of the verification of the petition and the nature and value of such interest;
7. Any special facts or circumstances by reason of which it is claimed that such interest should be released to the petitioner.

The petition may be filed within sixty days after its verification with the secretary of state, who shall present it to the commissioners of the land office at their next meeting thereafter, and who may call a meeting of the commissioners to consider the same. (*Amended by L. 1909, ch. 240, § 69; L. 1909, ch. 509; L. 1911, ch. 399 and L. 1912, ch. 272, in effect Apr. 11, 1912.*)

§ 90. Accelerating or impeding the flow of mineral waters.

Constitutionality.—It is within the power of a state, consistently with due process of law, to prohibit the owner of the surface by pumping on his own land, water, gas and oil, to deplete the subterranean supply common to him and other owners to their injury; so the statute of New York protecting mineral springs is not, as the same has been construed by the Court of Appeals of that state, unconstitutional as depriving owners of their property without due process of law. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61 (1910), *aff'g* 170 Fed. 1023.

§ 102. Reservation at Niagara; powers of commissioners.—*Subdivision 8, added by L. 1912, ch. 236, in effect Apr. 9, 1912, as follows:*

8. Have power and authority to grant to the city of Niagara Falls a license to lay, construct, maintain and operate a water main and hydrants in, through, under and along the lands of the state reservation at Niagara, upon such conditions as such commissioners may prescribe.

PUBLIC OFFICERS LAW.

(L. 1909, ch. 51.)

§ 2. Definitions.

State officers, as defined by this section, include commissioners of the State Reservation at Niagara. Rept. of Atty. Genl., Feb. 27, 1912.

§ 11. Every official undertaking, when required by or in pursuance of law to be hereafter executed or filed by any officer, shall be to the effect that he will faithfully discharge the duties of his office and promptly account for and pay over all moneys or property received by him as such officer, in accordance with law, or in default thereof, that the parties executing such undertaking will pay all damages, costs and expenses resulting from such default, not exceeding a sum, if any, specified in such undertaking. The undertaking of a state officer shall be approved by the comptroller both as to its form and as to the sufficiency of the sureties and be filed in the comptroller's office. The undertaking of a municipal officer shall, if not otherwise provided by law, be approved as to its form and the sufficiency of the sureties by the chief executive officer or by the governing body of the municipality and be filed with the clerk thereof. The approval by such governing body may be by resolution, a certified copy of which shall be attached to the undertaking. The sum specified in an official undertaking shall be the sum for which such undertaking shall be required by or in pursuance of law to be given. If no sum, or a different sum from that

L. 1912, ch. 481.

Official oaths and undertakings.

§§ 12, 15, 36.

required by or in pursuance of law, be specified in the undertaking, it shall be deemed to be an undertaking for the amount so required. If no sum be required by or in pursuance of law to be so specified, and a sum be specified in the undertaking, the sum so specified shall not limit the liability of the sureties therein. Every official undertaking shall be executed and duly acknowledged by at least two sureties, each of whom shall add thereto his affidavit that he is a freeholder or householder within the state, stating his occupation and residence and the street number of his residence and place of business if in a city, and a sum which he is worth over and above his just debts and liabilities and property exempt from execution. The aggregate of the sums so stated in such affidavits must be at least double the amount specified in the undertaking. If the surety on an official undertaking of a state or local officer be a fidelity or surety corporation, the reasonable expense of procuring such surety, not exceeding one per centum per annum upon the amount of such undertaking, shall be a charge against the state or political subdivision or municipal corporation respectively in and for which he is elected or appointed. The failure to execute an official undertaking in the form or by the number of sureties required by or in pursuance of law, or of a surety thereto to make an affidavit required by or in pursuance of law, or in the form so required, or the omission from such an undertaking of the approval required by or in pursuance of law, shall not affect the liability of the sureties therein. (*Amended by L. 1911, ch. 424 and L. 1912, ch. 481, in effect Apr. 18, 1912.*)

§ 12. Force and effect of official undertaking.

Liability of the sureties upon the bond of a county treasurer for his acts extends to the interval between the time when the bond was required by resolution of the board of supervisors and the time when it was actually delivered. *Waydell v. Hutchinson* (1911), 146 App. Div. 448, 131 N. Y. Supp. 315.

§ 15. Validation of official acts performed before filing official oath or undertaking.

Failure of justice of the peace to file oath of office.—While it is the duty of a justice of the peace to comply with the law requiring the filing of an undertaking and oath of office, and while he is liable to be punished for failure to so comply, he is not prevented from acting as such officer and his official acts are valid. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 598.

§ 36. Removal of town or village officer by court.

Application.—Where an official act or omission has occurred, the officer may be removed therefor without reference to the question whether it was done maliciously or corruptly. *Matter of Moran* (1911), 145 App. Div. 642, 130 N. Y. Supp. 432.

§§ 1, 38, 49, 53.

Rates to be fixed.

PUBLIC SERVICE COMMISSIONS LAW.

(L. 1910, ch. 480.)

§ 1. Purpose of public service commissions.

Purpose of public service commissions.—One of the paramount purposes of the Legislature in establishing public service commissions was to protect and enforce the rights of the public, and the statute should be construed with that in view. *People ex rel. Binghamton L. H. & P. Co. (1911)*, 203 N. Y. 7; *People ex rel. Third Ave. Ry. Co. v. Public Service Commission (1911)*, 145 App. Div. 318, 130 N. Y. Supp. 97.

§ 38. Liability for damage to property in transit.

This provision is not intended to limit the carrier's liability at common law, for the passenger's right of action under existing law was expressly preserved. *Robinson v. N. Y. C. & H. R. R. R. Co. (1911)*, 145 App. Div. 391, 129 N. Y. Supp. 1030.

The term "baggage," as used in this section, does not include property which is being moved by express or otherwise apart from and disconnected with the transportation of the owner. *Morgan v. Woolverton (1911)*, 203 N. Y. 52.

Failure to state value of baggage.—A company which enters into a contract with a passenger upon a railroad train to deliver a trunk at his home or other designated point cannot avail itself of the limitation in the section upon the amount of the recovery against a common carrier, where the value of the baggage is not stated. *Morgan v. Woolverton (1911)*, 203 N. Y. 52.

Waiver of the provisions of this section may be effected by instructions by common carrier to its agents that they were not to ask passengers the value of their baggage and were only to make an extra charge where passengers voluntarily stated the value to be over \$150. *Robinson v. N. Y. C. & H. R. R. R. Co. (1911)*, 145 App. Div. 391, 129 N. Y. Supp. 1030.

§ 49. Rates and service to be fixed by commission.

Complaint in action to recover penalty for refusal to give transfer.—Where, under the complaint in an action to recover a penalty under section 49 (7) of the Public Service Commissions Law for defendant's refusal to give a street railway transfer entitling plaintiff who had paid his fare for a continuous passage over a line leased by defendant, the plaintiff is entitled to show that said lease was made under the provisions of section 78 of the Railroad Law, the complaint is not demurrable on the ground that it does not state a cause of action, though reference is therein made to an agreement between the city and the two railway companies by which they agreed to convey a passenger over all lines on a continuous trip for a single fare but which agreement did not operate as a contract between the two companies so as to give plaintiff a right of action for the penalty prescribed by the Railroad Law. In the absence of a contract between the two railroad companies under section 78 of the Railroad Law, the agreement between them and the city could not operate to give a cause of action under section 49 (7) of the Public Service Commissions Law. *Lowenstein v. International Ry. Co. (1912)*, 75 Misc. 357.

§ 53. Franchises and privileges.

Application to corporation formed on reorganization.—Sections 53 and 54, requiring the approval by a public service commission of the exercise or transfer of franchises by a railroad corporation, do not apply to a corporation formed on the reorganization of a railroad corporation after foreclosure. *People ex rel. T. A. R. Co. v. P. S. Comm. (1911)*, 203 N. Y. 299.

L. 1912, ch. 289.

Reorganization of railroad corporations.

§§ 54-57.

§ 54. Transfer of franchises or stocks.

See *People ex rel. Third Ave. Ry. Co. v. Public Service Commission* (1911), 145 App. Div. 318, 130 N. Y. Supp. 97.

§ 55. Approval of issues of stock, bonds and other forms of indebtedness.

Validity of bonds issued without authority.—Bonds in the hands of *bona fide* holders, issued without authority of the proper commission, are not made void by the statute. *Goldan v. Delaware & Eastern Ry. Co.* (1911), 144 App. Div. 78, 128 N. Y. Supp. 936.

Issue of securities under plan of reorganization.—Under the provisions of this section, a public service commission is not justified in refusing to consent to the issue of securities by a railroad corporation under a plan of reorganization after foreclosure, because the value of the mortgaged property and the amount of new capital to be invested is less than the amount of securities sought to be issued. *People ex rel. T. A. R. Co. v. P. S. Comm.* (1911), 203 N. Y. 299.

§ 55-a. Reorganizations.—1. Reorganizations of railroad corporations, street railroad corporations and common carriers pursuant to sections nine and ten of the stock corporation law and such other laws as may be enacted from time to time shall be subject to the supervision and control of the proper commission and no such reorganization shall be had without the authorization of such commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission which, in making its determination, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. (*Added by L. 1912, ch. 289, in effect Apr. 12, 1912.*)

§ 56. Forfeiture; penalties.

The purpose of this section is to prevent intentional, deliberate and avoidable disobedience, and it will not be extended to cases of failure to obey which are involuntary and unavoidable. It is punitive and very highly penal, and in order to collect a penalty or penalties under it the plaintiff must establish clearly that the defendant has committed an offense; that the commission did in fact make an order which the defendant disobeyed. *People v. Whitridge* (1911), 144 App. Div. 486, 129 N. Y. Supp. 295.

§ 57. Summary proceedings.

Mandamus to compel street railway company to rebuild part of abandoned line.—A private person, who complains of no injury which is not common to the whole community, will not be granted a writ of mandamus compelling a street railway to exercise its franchise and rebuild part of its line which has been abandoned. Where, moreover, an application for the same relief has been made to the Public Service Commission, and denied, the courts will not entertain the proceeding even

§§ 69, 69-a, 101-a. Reorganization of gas, telegraph, etc., corporations. L. 1912, ch. 289.

if they have the power. *People ex rel. Karl & Espenlaub v. United Traction Co.* (1911), 145 App. Div. 645, 130 N. Y. Supp. 477.

§ 69. Approval of issues of stock, bonds and other forms of indebtedness.

The duty of the commission is to determine whether the proposed issue is necessary for the proper purposes of the company, is authorized by law and is to be used in a proper manner. If such are the facts it cannot withhold its certificate; otherwise it cannot grant it. It is beyond the power of the commission to permit the issue of improper securities upon the condition that the company cancel stock of about half the amount. *People ex rel. Binghamton L. H. & P. Co. v. Stevens* (1911), 203 N. Y. 7.

A statement of a petitioner's financial transactions in a proceeding under this section should be made in sufficient detail and with sufficient classification to show with reasonable certainty the exact question to be determined. *People ex rel. Binghamton L. H. & P. Co. v. Stevens* (1911), 203 N. Y. 7.

Procedure before commission.—While the commission may not be bound by technical rules of evidence still it is plainly intended that the whole proceeding for leave to issue bonds should assume a quasi-judicial aspect. *People ex rel. Binghamton L. H. & P. Co. v. Stevens* (1911), 203 N. Y. 7.

§ 69-a. Reorganizations.—1. Reorganizations of gas corporations and electrical corporations pursuant to sections nine and ten of the stock corporation law and such other statutes as may be enacted from time to time shall be subject to the supervision and control of the proper commission, and no such reorganization shall be had without the authorization of such commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which, in making its determination shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. (*Added by L. 1912, ch. 289, in effect Apr. 12, 1912.*)

§ 101-a. Reorganization.—1. Reorganization of telegraph and telephone corporations pursuant to sections nine and ten of the stock corporation law and such other laws as may be enacted from time to time shall be subject to the supervision and control of the proper commission and no such reorganization shall be had without the authorization of such commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which, in making its determination shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and

L. 1912, ch. 289.

Railroads along highways.

§§ 17, 21, 52.

any additional sum or sums as shall be actually paid in cash, provided, however, that the commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. (*Added by L. 1912, ch. 289, in effect Apr. 12, 1912.*)

RAILROAD LAW.

(L. 1910, ch. 481.)

§ 17. Acquisition of title to real property.

Effect of amendments upon former decisions.—Former decisions which were based upon the absence of legislative power have become obsolete by amendments to the Railroad Law expressly giving to railroad companies the right to acquire additional lands by condemnation for main tracks, branches, etc., outside of that previously acquired for its right of way. Hence the construction of the statute, as it then existed, in *Erie R. R. Co. v. Steward* (170 N. Y. 172) is no longer controlling. *Long Island R. R. Co. v. Sherwood* (1912), 205 N. Y. 1, revg. 147 App. Div. 895.

When railroad not required to take statutory steps for change of route in order to maintain proceedings to acquire such land.—The appellant, a railroad company, seeks to acquire lands about one hundred feet in width lying between its two branches and which abut upon its right of way on both. It does not seek the lands for the purpose of changing its route but to maintain it as at present and to improve it by additional tracks and by the construction of an overhead crossing. The changing of the location of the tracks is incidental to the improvement and the lands now sought to be acquired are necessary by reason of such additional tracks and of the change of grade. Held, that it is not necessary to take the statutory proceedings to effect a change of route in order to maintain proceedings to acquire title to such lands. *Long Island R. R. Co. v. Sherwood* (1912), 205 N. Y. 1, revg. 147 App. Div. 895.

§ 21. Railroads along highways.

Obstruction of street by railroad tracks outside of land appropriated for railroad purposes; when writ of mandamus will issue to compel municipal officers to remove such tracks.—When an officer of a municipality, who is charged by its charter with the duty of removing unlawful incumbrances from the public streets, fails to do so, property owners who are prejudiced thereby may compel action by mandamus. Judgment awarding the writ necessarily follows where it is established that a railroad company laid a large number of tracks in a street beyond the land originally and lawfully appropriated to the construction of its main line and by the storage of freight and other cars on such tracks, obstructed the public easement by practically closing the street. The use of the street having been found to be unauthorized, the judgment should not be confined to an alternative demand that the railroad company restore the street to its former state or to such state as not unnecessarily to impair its usefulness. This section has no application to such a case. *People ex rel. Sibley v. Greiser* (1912), 205 N. Y. 24, affg. 146 App. Div. 919.

See generally. *Danner v. N. Y. & Harlem R. Co.* (1911), 73 Misc. 113, 130 N. Y. Supp. 723.

§ 52. Fences, farm crossings and cattle-guards.

Liability of company for failure to maintain fences.—The provision requiring railroad companies to erect and maintain fences along their rights of way limits their

§§ 53, 64.

Injuries to employees.

liability for failure to do so to "damages done by their agents or engines or cars to any domestic animals thereon"; hence, there is no liability for injuries sustained by animals which by reason of such failure have escaped from a pasture and are injured by falling through a bridge on the roadway of a railroad company. *Jimerson v. Erie R. R. Co.* (1911), 203 N. Y. 518.

§ 53. Sign boards and flagmen at crossings.

The words "local authorities" as used in this section mean persons having control and authority over the highways. Such persons are, under section 80 of the Town Law, the Superintendent of Highways, elected by the electors of a town or appointed by the Town Board. *Local Authorities v. N. Y. N. H. & H. R. R. Co.*, 144 App. Div. 791, 129 N. Y. Supp. 643.

§ 64. Injuries to employees.

Construction.—While the provisions of this section are remedial, they are an innovation upon the common law, and should not be applied to cases not plainly within the legislative intent, but, when applicable, should have a construction liberal and commensurate with their purpose. *Utess v. Erie R. R. Co.* (1912), 204 N. Y. 324.

Application.—The failure of an engineer to give warning of the approach of his train constitutes negligence on the part of the railroad company itself and not of a co-employee. *Sereno v. D. L. & W. R. Co.* (1911), 145 App. Div. 136, 129 N. Y. Supp. 159.

Plaintiff, a switchman in the yard of the defendant, was injured without negligence on his part, through being struck by a piece of coal which fell from the locomotive tender of a passenger train he had signaled as it passed him. The action was at common law. The trial justice based the liability, if any, on this section and held that if the jury found that the tender was loaded with coal in such a manner that pieces of coal were in danger of falling from it when the locomotive was operated, and the engineer having control of the engine moving the tender and train knew or ought to have known that it was so loaded and then proceeded to operate it in such a manner that the coal fell and struck the plaintiff, the defendant was liable. It was held, that the evidence did not present to the jury any proof or fact warranting a finding that the engineer knew or ought to have known that the coal was in danger of falling upon the plaintiff, and the trial justice should have granted the defendant's motion for a non-suit. *Utess v. Erie R. R. Co.* (1912), 204 N. Y. 324.

Application to street railways.—Where a motorman on a street railway is killed by the negligence of a fellow-motorman in operating his car the plaintiff is entitled to the benefit of this section. *Gorman v. Brooklyn, Queens County and Suburban R. R. Co.* (1911), 147 App. Div. 21, 131 N. Y. Supp. 686.

"Vice-principal."—An engineer in charge of a train, who has in his care and under his direction the fireman and head brakeman, is a "vice-principal" within the meaning of this section. *Reynolds v. Lehigh Valley R. R. Co.* (1911), 148 App. Div. 345.

When engineer, running a locomotive, a vice-principal of railroad company, for whose negligence the company is responsible.—An engineer, who is in charge of and running a locomotive to which no cars are attached, which was classed as a train, there being no conductor, is responsible for the safety of the locomotive and the fireman working thereon, and is a vice-principal of the railroad company within the meaning of this section, and hence the company is chargeable with the negligence of such engineer in allowing the water in the locomotive boiler to become so low as to cause an explosion whereby the fireman received such injuries that he died therefrom. The fact that plaintiff's intestate misrepresented his age, by stat-

L. 1912, ch. 368.

Repair of streets; speed.

§§ 90, 91, 101, 175, 178.

ing that he was over twenty-one years of age, and obtained his position as fireman by such representation, thereby evading a rule of the defendant forbidding the employment of minors, does not affect the relation of master and servant with respect to this statute, since he was actually in the service of the company and was entitled to the protection of an employee accorded by law. *Hart v. N. Y. C. & H. R. R. Co.* (1912), 205 N. Y. 317.

See generally *Matter of Taylor* (1911), 144 App. Div. 634, 640, 129 N. Y. Supp. 378; see *Connell v. N. Y. Cent. & H. R. R. Co.* (1911), 144 App. Div. 664, 669, 129 N. Y. Supp. 666.

§ 90. New streets across railroads.

Application.—Whenever a municipal corporation proposes to open a public street across the tracks and right-of-way of a steam railroad company, this section requires that an application be made to the Public Service Commission, for a determination, as to whether the street should pass over or under such railroad, or at grade, before an application is made to the Supreme Court for the appointment of commissioners of estimate and assessment to appraise the lands and property of the railroad company required for the opening of the street. *Matter of City of New York (West 134th St.)*, (1912), 204 N. Y. 465.

§ 91. Petition for alteration of existing crossing.

Execution of order of Public Service Commission to eliminate grade-crossing.—

The Public Service Commission, under this section, has power to make an order directing a railroad company to close a highway or divert travel to another highway in order to eliminate a railroad crossing, by removing a bridge in a street and building an embankment across the street; and the work done by the railroad company in obedience to such an order cannot be regarded either as an unlawful obstruction of the street or an actionable nuisance. *Danner v. N. Y. & Harlem R. Co.* (1911), 73 Misc. 113, 130 N. Y. Supp. 723.

§ 101. Consent of public service commission in certain cases.

Construction.—This section should be read and construed in connection with section 39. *Bingemann v. International Railway Co.* (1911), 73 Misc. 459.

Application of "Milburn Agreement" within the city of Buffalo. *Bringemann v. International Railway Co.* (1911), 73 Misc. 459.

§ 175. Percentage of gross receipts to be paid in cities or villages; report of officers.

Section does not apply to lines constructed prior to 1890, which have passed into the control of, and are operated by, new corporations organized under the General Railroad Law of 1890, as lessees or otherwise. *Pennsylvania Steel Co. v. New York City Ry. Co.*, 191 Fed. 216 (1911).

§ 178. Repair of streets; rate of speed; removal of ice and snow.—Every street surface railroad corporation, so long as it shall continue to use or maintain any of its tracks in any street, avenue or public place in any city or village, shall have and keep in permanent repair that portion of such street, avenue or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe. In case of the neglect of any corporation to make pavements or repairs after the expiration of twenty days'

§§ 181, 191.

Rate of fare; construction, etc.

L. 1912, ch. 482.

notice to do so, the local authorities may make the same at the expense of such corporation, and such authorities may make such reasonable regulations and ordinances as to the rate of speed, mode and use of tracks, and removal of ice and snow, as the interest or convenience of the public may require. A corporation whose agents or servants willfully or negligently violate such an ordinance or regulation shall be liable to such city or village for a penalty not exceeding five hundred dollars, to be specified in such ordinance or regulation. (*Amended by L. 1912, ch. 368, in effect Dec. 1, 1912.*)

Action against railway company for maintaining nuisance; defense.—In an action by a city against a railroad company for maintaining a nuisance it is no defense that the city might have the right to repair or re-pave the streets and charge the cost thereof to the railroad company. There is nothing in the statute which makes that remedy exclusive. *City of New York v. Montague* (1911), 145 App. Div. 172, 129 N. Y. Supp. 1084.

Application; notice.—A lessee operating such tracks will be required to keep the pavement in repair. The section likewise applies to tracks maintained by a company under claim of right, although not actually used by it, or used only to a small extent. A notice served on the lessee is sufficient although the company be erroneously designated and the area to be paved be erroneously stated; but a notice stating that the company has failed to comply with a prior notice is insufficient where the prior notice was not served. *Pennsylvania Steel Co. v. New York City Ry. Co.*, 191 Fed. 216 (1911).

Obligation of street railway company to keep bridge in repair, see *Town of Queensbury v. Hudson Valley R. Co.* (1912), 75 Misc. 197.

§ 181. Rate of fare.

Construction and application of sections 101 (now 181) and 104 (now repealed).—Upon examination of the history of legislation on the subject, it was held, that sections 101 and 104 of the Railroad Law (L. 1892, ch. 676) were not intended to interfere with the fares which existing street railroad companies were entitled to charge, but required as a condition for the exercise of the privilege of expansion in any direction that they should subject not only their newly acquired property but their existing property to the provisions of the statute relative to single fares and transfers. A merger or consolidation does not exempt from conditions imposed in the case of leases or traffic agreements, and the courts should not import such an exemption into the statute unless the phraseology of the statute either excludes it or fails to include it. *Braffett v. Brooklyn, Q. C. & S. R. R. Co.* (1912), 204 N. Y. 440.

Right of passenger to transfer.—A passenger on the line of a local company operating wholly within a city is entitled for the payment of a single fare to a transfer to the cars of another company using the same tracks, if he complies with the reasonable rules of company in obtaining and using the transfer. *Webber v. Rochester, Syracuse & Eastern R. Co.* (1911), 145 App. Div. 84, 129 N. Y. Supp. 304.

§ 191. Road not to be constructed upon ground occupied by public buildings or in public parks.—No street surface railroad shall be constructed or extended upon ground occupied by buildings belonging to any town, city, county or to the state, or to the United States, or in public parks, except in tunnels to be approved by the local authorities having control of such parks. Provided, however, that the commissioners of the state reservation

L. 1912, ch. 482.

Construction in certain parks.

§ 191.

at Niagara, by and with the consent of the commissioners of the land office, may construct, without expense to the state, street railroad tracks upon and along that part of the riverway, so called, between Falls and Niagara streets, in the city of Niagara Falls, and in their discretion may grant revocable licenses to street surface railroad companies to use such tracks upon such terms as said commissioners may prescribe. And provided, further, that a street railroad may be constructed or extended upon a route or routes with a right of way not exceeding fifty feet in width in the Pelham Bay park in the city of New York, said route or routes to be designated and fixed by the board of estimate and apportionment of said city, with the approval of the park board of said city, and shall constitute the most direct, appropriate route or routes in the opinion of said board of estimate and apportionment and said park board, but no such street surface railroad shall be constructed or extended until a franchise or right therefor shall have been granted by said board of estimate and apportionment, pursuant to the statutes relating to the granting of such franchises or rights, and requiring adequate compensation therefor, and no company or corporation shall be given the exclusive right to operate a street surface railroad upon such route or routes, and no such street surface railroad shall be constructed at grade upon, along or across any of the existing or proposed streets, highways, driveways, parkways or park walks within the limits of said park. (*Amended by L. 1912, ch. 482, in effect Apr. 18, 1912.*)

Exemption of common from condemnation.—A common established by a landowner who sold lots surrounding it to various grantees, with rights of access over the common to the village street passing through it, is not a public park, although it is under the control of the village authorities, if they have merely treated it as a wide street and have not attempted to embellish or ornament the common on either side of the roadway. Hence, such common is not exempt from condemnation for street railroad purposes under this section. *Buffalo, Lockport & Rochester R. Co. v. Hoyer* (1911), 147 App. Div. 205, 132 N. Y. Supp. 31.

Damages.—Where the grantor of lands surrounding a common subsequently granted a fee therein to a church society owning lands abutting thereon, the society is entitled to more than nominal damages where a railroad is constructed on a public street running through the common. The damages should include the value of the strip actually taken by the railroad, subject to the right of passage by the public and also subject to easements of ingress and egress held by other abutting owners; also the value of trees destroyed by the railroad and the damages caused to the residue of the church property by their mutilation and destruction. The society should also be compensated for whatever damage may reasonably result to the residue of its contiguous land by reason of the fact that a portion of its fee is used for street railroad purposes. *Buffalo, Lockport & Rochester R. Co. v. Hoyer* (1911), 147 App. Div. 205, 132 N. Y. Supp. 31.

RAPID TRANSIT.

(L. 1891, ch. 4.)

§ 4. Public service commission to determine necessity for railroads; routes; plan; consents; parks and streets excepted.

(1) The public service commission of the first district upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and of a city having over one million of inhabitants, according to the last preceding national or state census, that a rapid transit railroad or railroads for the conveyance and transportation of persons and property should be established therein, and upon the request in writing of the local authorities of any such city at any time, the said commission shall proceed forthwith to consider and determine the same questions, and in each case the said commission shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after any such consideration and inquest, the said commission shall determine that a rapid transit railroad or railroads, in addition to any already existing, authorized or proposed, are necessary for the interest of the public, and such city, it shall proceed to determine and establish the route or routes thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected. The commission, from time to time, may locate the route or routes of such railroad or railroads over, under, upon, through and across any streets, avenues, bridges, viaducts, rivers, waters and lands within such city, including blocks between streets or avenues, or partly over, under, upon, through and across any streets, avenues, bridges, viaducts, and lands within such city and partly through blocks between streets or avenues; provided that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street, bridge, viaduct, or highway, upon which it is proposed to construct or operate such railroad or railroads be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners appointed by the appellate division of the supreme court in the department of the proposed construction, given after due hearing of all parties interested, and confirmed by the court, that such railroad or railroads ought to be constructed or operated, be taken in lieu of the consent of such property owners; except that no public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state of New York, or of the United States, nor those portions of Grand, Classon, Franklin avenues and Downing street in the borough of Brooklyn, city of New York, lying between the southerly line of Lexington avenue and north-

erly line of Atlantic avenue, nor that portion of Classon avenue in said borough lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that portion of Washington avenue in said borough lying between Park and Atlantic avenues, nor that portion of Nostrand avenue in said borough lying northerly of the northerly line of Eastern parkway, nor Debevoise place, Irving place and Lefferts place, Lee avenue, Waverly avenue, Vanderbilt avenue and Clinton avenue in said borough of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue, in the borough of Manhattan, city of New York, nor that portion of any street or avenue which is now actually occupied by any elevated railroad structure, shall be occupied by any corporation for the purpose of constructing a railroad in or upon any of such public parks, lands or places, or upon or along either of the said excepted streets or avenues. It shall be lawful for said commissioners to locate the route of a railroad or railroads by tunnel under any such public parks, lands, places, rivers or waters and to locate the route of any railroad to be built, under this act, across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York, or across any of the streets or avenues excepted in this act at any point at which, in its discretion, the public service commission may deem necessary in the location of any route or routes, or under, or under and along, any of the said streets or avenues now so occupied or so excepted in this act. Nothing in this act shall authorize the construction of an elevated railroad on Broadway south of Thirty-third street, nor on Madison avenue in the borough of Manhattan, city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets and places in the borough of Manhattan, city of New York, that is to say: Second avenue, below Twenty-third street; Fourteenth street, between the easterly line or side of Seventh avenue, and the westerly side of Fourth avenue; nor Eleventh street, west of Seventh avenue, nor any part of Bank street; Nassau street; Printing House square, so called, south of Franklin street; Park row, south of Tryon row; Broad street and Wall street.

(2) The provisions of the said section four of the said act shall, with reference to any rapid transit railroad for which routes and a general plan have been heretofore adopted by the board of rapid transit railroad commissioners of any city, and for the municipal construction of which a contract has been heretofore made by any city, be deemed to have been in full force as hereby amended from before the time when the routes and general plan for which such railroad or railroads were so adopted by the board of rapid transit railroad commissioners. (*Amended by L. 1894, ch. 528; L. 1895, ch. 519; L. 1900, ch. 616; L. 1904, ch. 564; L. 1909, ch. 498; L. 1910, ch. 505 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 10. Appropriation for commission; audit and payment of expenditures; bonds.—The board of estimate and apportionment or other board or public

SUP. III—28

body on which is imposed the duty, and in which is vested the power, of making appropriations of public moneys for the purposes of the city government in any city in which it is proposed to construct such railroad or railroads shall, from time to time, on requisition duly made by the public service commission, appropriate such sum or sums of money as may be requisite and necessary to properly enable it to do and perform, or cause to be done and performed, the duties herein prescribed, and such appropriation shall be made forthwith upon presentation of a requisition from the public service commission, which shall state the purposes for which such moneys are required by the commission. In case the said board of estimate and apportionment or such other board or public body fail to appropriate such amount as the public service commission deem requisite and necessary, the commission may apply to the appellate division of the supreme court, in the department in which the railroad is to be or has been constructed, on notice to the board of estimate and apportionment, or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes required by this section, and the decision of said appellate division shall be final and conclusive; and no city shall be liable for any indebtedness incurred by the commission in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of any such city, after such appropriations shall have been duly made, to audit and pay the proper expenditures of said commission upon vouchers therefor, to be furnished by the said commission, which payments shall be made in like manner as payments are now made by the auditor, comptroller, or other public officers, of claims against and demands upon such city; and for the purpose of providing funds with which to pay the said sums, the comptroller or other chief financial officer of said city is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes, and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. If the said commission shall determine that part of its expenses shall be included in determining the cost of construction of a railroad constructed under sections twenty-six, twenty-seven, twenty-nine or thirty-three of this act, then and in that event the said board of estimate and apportionment or other board or public body upon the requisition of the commission duly made may appropriate such sum or sums of money as may be requisite and necessary for such part of its expenses and authorize the issue of corporate stock for such purposes, and it shall thereupon become the duty of the comptroller of said city to issue and sell corporate stock of the city for such purposes. (*Amended by L. 1894, ch. 752; L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 24. **Connections with other railroads, stations and ferries.**—*Subdivision 1, amended by L. 1912, ch. 226, § 3, in effect Apr. 9, 1912, as follows:*

1. The public service commission may also from time to time, with the approval of the board of estimate and apportionment, upon application of any person, firm or corporation owning, leasing, constructing or actually operating or having the right by contract to thereafter operate a railroad wholly or in part within the limits of the city in which the commission has power to act, if in the judgment of said commission, the public interests so demand, fix and determine the route or routes by which any such person, firm or corporation may connect with other railroads, or the stations thereof, or with ferries or bridges, or may extend his or its lines or lines which he or it operates or has the right to operate as aforesaid within said city, or upon the application of a corporation organized under the railroad law for any of the purposes specified in subdivision nine of section twenty-seven of this act, and agreeing to equip, maintain and operate or to procure to be equipped, maintained and operated any road or roads of the city in connection with any existing railroad of a railroad corporation and any extension or extensions thereof wholly within such city, on the basis of a division of income, earnings or profits as hereinafter provided, the commission may with like approval, if in the judgment of the commission the public interests so demand, fix and determine the route or routes by which such corporation may construct, maintain and operate such extension or extensions, and may, with like approval, authorize such corporation to construct, maintain and operate such extensions, and may with like approval authorize any such person, firm or corporation to lay an additional track or tracks on, above, under or contiguous to a portion or the whole of the route or routes of his or its railroad or railroads within said city and to acquire terminal or other facilities necessary for the accommodation of the traveling public on any street or place except the place known as Battery park on which said railroad shall be located; and may also with like approval authorize any such person, firm or corporation to lay his or its tracks and operate his or its railroad to any terminal or terminals within the said city, and to transport over the same passengers or freight or both, and to run over the same either passenger trains or freight trains or mixed trains; and the commission shall with like approval fix and determine the locations and plans of construction of the railroads upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by said person, firm or corporation, and such other terms, conditions and requirements as to the said boards may appear just and proper, provided, however, that every such determination, authorization and license shall be made upon the condition that such person, firm or corporation shall from the time of the commencement of the operation of any such railroad or track or tracks under such determination, authorization or license, annually pay to the said city a sum or rental which may be a part or proportion of gross or net receipts,

and that the amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railroad, track or tracks, shall be prescribed by the commission in such determination, authorization and license, and that every such determination, authorization and license shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which the same shall be so prescribed and for readjustment from time to time in the future, to the end of the period of renewal, if any, of the amount of such annual payment at intervals each of not more than twenty years; provided further, however, that such determination, authorization or license may provide that for the whole or any portion of the life of the grant in lieu of such annual rental the gross or net receipts derived from the operation of such railroad owned, operated or to be operated by the said person, firm or corporation within the limits of said city, and from the operation of such connecting or extending route or routes, additional track or tracks or facilities may be combined, and that the city may receive as such compensation at intervals named a specified part or proportion of the income, earnings or profits of the railroad, and the route or routes, additional track or tracks or facilities whose receipts are so combined or of those and any other railroads which may be operated in connection therewith in like manner, which part or proportion may be deferred to a previous distribution to said person, firm or corporation, which distribution may be cumulative, and in such case such determination, authorization or license may apportion out of the amount so to be received by the city and shall specify a portion thereof which shall be deemed to be the rental for the use of such route or routes, additional track or tracks or facilities, and shall also provide for determining the amount of the income, earnings or profits of the railroad within the limits of the city and of the route or routes, additional track or tracks or facilities whose receipts are so combined and may provide for readjustment of the proportion which the city shall receive or of the portion thereof which shall be deemed to be the rental for the use of said route or routes, additional track or tracks or facilities at specified intervals, and may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its proportion of such income, earnings or profits or as such rental upon any such readjustment thereof. Such determination, authorization or license shall contain a reservation to the city of the privilege, upon giving a specified notice, to terminate the franchise, right or authority granted under this section as to all, and if deemed advisable as to any specified portion or portions of such route or routes, additional track or tracks or facilities, and to purchase and take the plant and property as defined in the grant at any time after the expiration of ten years from the date when operation of any part of said route or routes, additional track or tracks or facilities or of such specified portion thereof shall actually begin, upon paying an amount for said plant and property as property, excluding any value for the franchise, right or authority, which amount

L. 1912, ch. 226.

Connections with other railroads, etc.

§ 24.

shall not exceed actual cost as defined in the grant of said plant and property plus fifteen per centum thereof and shall decrease under provisions of the grant as the franchise continues, so that at the end of the full term of the grant or at the end of a period specified therein, no amount shall be paid except for betterments, additions, improvements and additional equipment as hereinafter provided. The grant shall provide a method of ascertaining the amount to be paid for said plant and property on termination by the city of the said franchise, right or authority and for the betterments, additions, improvements and additional equipment at the end of the full term of the grant, and may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of such plant and property or any part or portion thereof for any purpose under such grant. Such determination, authorization or license may also make suitable provision to the end that if the city shall after so terminating such franchise, right or authority or at the end of the full term of the grant propose to give a new franchise, right or authority in the enjoyment of which said plant and property or any part thereof may be utilized, the title to and possession of said plant and property or any part thereof may be transferred directly to the grantee of any such new franchise, right or authority when the said new grantee shall pay the amount so required; provided, however, that in the case of additional track or tracks added to any existing elevated rapid transit railroad, the determination, authorization or license may provide that said privilege of the city to terminate the franchise, right or authority therefor and to purchase and take the plant and property shall not be for railroad transit operation either by the city or by any other party, and shall be without prejudice to the rights of the said person, firm or corporation in the lines of said existing elevated railroad, and may make adequate provision for the protection of such rights. The commission may with like approval authorize the relocation of any existing tracks, structures, stations and appurtenances of such person, firm or corporation in any street or avenue in which the same now exist, such relocated structure to be held under all the terms and privileges of the original franchise. (*Subd. amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 6 amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

6. Every such certificate granting any franchise, right or authority, as aforesaid, except for additional track or tracks added to any existing elevated rapid transit railroad shall provide that upon the expiration of a period fixed therein the franchise shall end and that upon such termination thereof all the rights of property of the grantee in the streets, avenues, parkways, highways and public places shall cease and terminate without compensation and shall further provide that upon such expiration of such franchise, right or authority the plant and property together with the appurtenances

thereto, of the grantee, constructed pursuant to such certificate, except betterments, additions, improvements and additional equipment as defined in the grant, shall become the property of the city without further or other compensation to the grantee; and that such betterments, additions, improvements and additional equipment shall be and become the property of the city on paying the grantee the amount ascertained as provided pursuant to said certificate. The provisions of this section shall apply to any railroad or railroads constructed, constructing or contracted for under the provisions of section twenty-six of this act and to any person, firm or corporation constructing or operating such railroad or railroads. (*Amended by L. 1909, ch. 226, and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 26. **Municipal construction; public service commission in a city formed by consolidation.**—*Subdivision 2, amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:*

2. As soon as such consents, where necessary, shall have been obtained for any rapid transit railroad or railroads and the detailed plans and specifications have been prepared as provided in section six of this act, the said commission, for and in behalf of said city, may enter into a contract or contracts with any person or persons, firm or firms, or corporation or corporations, which in the opinion of said commission shall be best qualified to fulfill and carry out said contract or contracts for the construction of such road or roads, including such galleries, ways, subways and tunnels, for subsurface structures as said commission may include in the plans for such road or roads under the authority of section six of this act, upon the routes and in accordance with the plans and specifications so adopted, for such sum or sums of money, to be raised and paid out of the treasury of said city, as hereinafter provided, or to be contributed in part or in whole for the construction of such road or roads by the contractor having the contract for the equipment and operation of such road or roads as a consideration for the making of such contract for equipment and operation as hereinafter provided. Such contract for construction shall contain such terms and conditions, not inconsistent with the aforesaid plans and specifications, as said commission shall determine to be best for the public interests. The sum or sums of money to be paid for the construction of such road or roads shall be separately stated in the contract or contracts from the sum or sums to be paid for any galleries, ways, subways or tunnels for subsurface structures, the construction of which is provided for in such contract or contracts. And said commission may in any case contract for the construction of the whole road, or all the roads provided for by the aforesaid plans in a single contract, or may by separate contracts, executed from time to time, or at the same time, with one or more such persons, firms or corporations, provide for the construction of a part or parts of said road or roads or for the construction at first of two or more tracks over a part or parts of such road or roads and afterwards of one or more additional tracks over a part

L. 1912, ch. 226.

Contract for equipment, maintenance, etc.

§ 27.

or parts of such road or roads as the necessities of said city and the increase of its population or the advantageous and economical performance of the work may in the judgment of said commission require; or the said commission may in its discretion by separate contracts executed from time to time or at the same time contract with one or more persons, firms or corporations for the performance of any kind or kinds of work or any portion or portions of the work or for the furnishing of any material or materials or for the performance of any labor necessary for or incidental to the construction of the said road or roads or any part or parts thereof. (*Subdivision amended by L. 1909, ch. 498, and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 27. Contract for equipment, maintenance and operation of road.—*Subdivision 1, amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:*

1. The public service commission shall, subject to the approval of the board of estimate and apportionment, or other analogous local authority of such city, have full power and authority to provide for the maintenance, supervision, care and operation of the railroad or railroads and also of the aforesaid galleries, ways, subways and tunnels for subsurface structures and all other appurtenances, constructed or to be constructed for and at the expense of such city pursuant to the provisions of this chapter, and may, with like approval, enter into a contract with any person, firm or corporation, who or which in the opinion of said commission shall be best qualified to fulfill and carry out said contract, for the equipment, or any part thereof not provided for pursuant to the next preceding section of this act, of such road or roads, at his or its own cost and expense, and for the maintenance and operation of such road or roads for a term of years to be specified in said contract and not to exceed twenty years, or in lieu of such definite term of twenty years the contract may be for a longer period to be fixed by the contract and in such case it shall provide that the city upon giving a specified notice shall have the right to terminate the contract for the equipment, maintenance and operation of such road or roads as to all and if deemed advisable as to any specified portion or portions thereof at any time after the expiration of ten years from the date when operation of any part of such road or roads or of such specified portion thereof shall actually begin, but such right of termination shall be upon condition as follows:

(1.) If the title to the equipment of said railroad or railroads shall not be vested in the city then that the equipment of said railroad or railroads or portion thereof suitable to and used for purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but which shall not be greater than the actual cost of same plus fifteen per centum thereof and such equipment shall upon such termination of such contract become and be the property of the city on paying to the contractor such amount, or in case the title to the equipment of said railroad or railroads shall be vested in the city then that the

city shall pay to the contractor an amount for his investment in the equipment of said railroad or railroads, or portion thereof, which shall not exceed the actual cost to the contractor of the equipment of said railroad or railroads or portion thereof, plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid except that if additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the contractor's investment in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen per centum thereof and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract, and

(2.) Upon the further condition if said railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of said road or portion thereof which shall not exceed the actual cost to the contractor of constructing said road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid, except that if betterments, additions or improvements shall be required by the commission or approved by the commission prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the contractor's investment in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

The contract shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's said investment in the construction of said road upon termination by the city of any such contract and for the equipment of such railroad at the end of the full term of the contract, and the contract may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of the contractor's said investment in the construction of said road and of the equipment or any part or portion of either thereof for any purpose under said contract. The contract may provide that the title to the equipment as well as to said road, shall vest in the city from the beginning and that the amount to be paid by the city for the contractor's investment in such equipment shall decrease as the term of the contract con-

tinues, so that at the end of the full term of the contract no amount shall be payable therefor except for additional equipment as aforesaid.

The contract shall provide that upon the expiration of a period fixed in the contract, the term of said contract shall end without compensation to the contractor except as provided in the contract, for betterments, additions or improvements to any such railroads required to be made or approved by the commission prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of said contract to the amount if any ascertained as provided in the contract, and that in such event said equipment shall become the property of the city upon payment to the contractor of the said amount or, if the title to the equipment be vested in the city, then an amount for the contractor's investment in additional equipment for any such railroads to be ascertained as provided in the contract. The contract may also provide that the city in exercising the right so to terminate any contract shall for such compensation as may be reasonable and which shall be determined pursuant to the contract permit the contractor whose contract is so terminated or the assignee or lessor of the contractor to use the tracks, structure and line equipment of a portion of such road or roads when necessary or convenient to reach terminals, yards or other facilities of the contractor or such assignee or lessor then located thereon. The contract may also provide for assuring that in case a new contract under this section for equipment and for maintenance and operation of such railroad or railroads is made after such termination pursuant to notice or after the expiration of the full term of the contract that the title to and possession of the equipment so taken and the right to the possession of the railroad so constructed may be transferred directly to the new contractor upon his paying the amount so required. (*Subdivision amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 2 inserted by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

2. If such contract be made with a railroad corporation organized for the purpose of maintaining and operating a railroad, including the equipment or any part thereof, constructed pursuant to the provisions of this chapter, and which has entered into a contract or contracts for the maintenance and operation of a railroad or railroads theretofore constructed in whole or in part at the expense of the city as in this act provided, and is engaged in the maintenance and operation of the same within such city, and if such contract shall make provision for the equipment, maintenance and operation of such road or roads of the city in connection with the said railroad or railroads theretofore constructed as aforesaid at the expense of the city, and for a single fare, the said corporation and the city may in such contract or by modification of an existing contract or contracts provide that the original term of any contract for operation of the said railroad

or railroads theretofore constructed in whole or in part at the expense of the city, may be extended or reduced and any right to a renewal or renewals thereof may be abrogated or waived so that such term as extended or reduced shall become and be coterminous with the term for equipment, maintenance and operation of such road or roads of the city to be fixed in and by such contract; and that if the city shall elect to terminate the contract for equipment, maintenance and operation of such road or roads as to any line or portion thereof which with a connecting line or portion of the said railroad theretofore constructed and then operated by such corporation shall make a continuous line, then the city may when so terminating such contract as to any such line or portion thereof, take over the said connecting line or portion thereof theretofore constructed in whole or in part at the public expense and then operated by the said railroad corporation and terminate the contract of such corporation as to the same, provided that in lieu of such connecting line or portion thereof so taken over the said corporation shall for the then unexpired term of the contract for operation of the railroad theretofore constructed have the right to maintain and operate without right of recaption by the city another line of road or portion thereof specified in such contract which with the said lines of the railroad theretofore constructed shall make a continuous line, and the contract shall in such case provide for adjustment between the city and the corporation of the difference in the value of the right to operate the lines or portions thereof so exchanged by agreement or arbitration or by the court and for payment of such difference between them. The city and the corporation may also in such contract provide that if the city shall under any provision of law terminate the contract for the maintenance and operation of the said road or roads of the city after the expiration of ten years from the date when operation of any part of such road or roads shall actually begin, the city may at any time after thirty-five years from said date terminate the said contract or contracts for the maintenance and operation of the railroad or railroads theretofore constructed at the public expense, and take over such railroads upon payment to said company of a sum not exceeding the then present worth of the unexpired portion of the term of said contracts to be ascertained as provided in such contract, which may provide that in default of agreement such sum may be determined by arbitration or by the court.

The contract between the city and such corporation may also provide that in consideration of the operation of the railroads specified as provided for in such contract and the said railroad or railroads theretofore constructed in whole or in part at public expense in connection with each other for a single fare, and of the payment by said company of moneys to be applied as hereinafter authorized to or toward the construction by the city of the road or roads to be maintained and operated under such contract, and in further consideration of any covenants or agreements by the company to modify the term or terms of its leases or to waive or modify any of the other provisions of its contract or contracts, the gross receipts

of the operation of such railroads theretofore constructed and of such road or roads of the city to be maintained and operated under such contract may be combined during the term of such contract, and that the city shall receive for the use of its said additional road or roads at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined, and in such case the contract may apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under said contract. Any such contract shall provide for determining the amount of income, earnings or profits of the railroads whose gross earnings are so combined, and for such considerations may authorize the retention by the said railroad corporation for each year of the term of such contract, prior to the payment of any sums or of any part or portion of the income, earnings or profits to the city as rental for the use of the roads specified or provided for in such contract, of (a) a specified sum of money, which sum may represent the average annual income from operation of the said railroad or railroads theretofore constructed and operated by such corporation for any two or more years; (b) a sum not exceeding six per centum per annum for each year upon the investment of the said company including brokerage charges not exceeding three per centum, in the construction and equipment of the said road or roads of the city to be maintained and operated under such contract; and (c) a sum not exceeding the annual expense or cost to the contractor plus one per centum per annum on account of the contractor's investment in betterments or improvements upon or additions to such road or roads and equipment. Such contract may also provide that such annual payments shall be cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of the said gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city. (*Subdivision added by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 2 renumbered as 3 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

3. Every such contract shall contain such terms and conditions as to the rates of fare to be charged and the character of services to be furnished and otherwise as said commission shall deem to be best suited to the public interests, and subject to such public supervision and to such conditions, regulations and requirements as may be determined upon by said commission, with like approval; provided, that in case different parts of a road shall be constructed at different times or at intervals of time, or if the contract shall provide for the use by the contractor of an existing railroad as part of a continuous route as aforesaid, then and in any such case the public service commission may, in its discretion, prescribe periods for the operation of the different parts of said road so that at one period of time

in the future the commission may be enabled to make a single operating contract or lease of the entire road. The said commission may in its discretion, as one of the terms and conditions of any such contract, provide that as a consideration for the making of such contract the contractor in addition to any sums to be paid as in this act provided by way of rental or otherwise for the use of such road or roads shall contribute a part of the cost of construction of such road or roads which shall be contributed and disbursed by such method, in such manner and at such times as may be provided for in any such contract, and which contribution shall be deemed to be an investment by the contractor in the construction of such road or roads or to be part of the cost to the contractor of constructing such road or roads within the meaning of the first subdivision of this section providing for termination of such contract by the city. Any such contract may provide for the construction during the term of such contract of any branches or extensions of such road or roads and the construction of additional lines and for the equipment and operation thereof by the contractor in connection with the said road or roads and may make separate provision for apportioning the receipts of such road or roads and of such branches, extensions or additional lines and as to the compensation to be paid to the city for the use of any such branches, extensions or additional lines. The city may enter into a contract for the equipment, maintenance and operation of any such road or roads before contracts for construction of such road or roads or any portion or portions thereof shall have been made, and in such case the contract may provide that the city may construct or complete such road or roads or additions thereto or betterments thereof from time to time at the expense of the city or partly at the expense of the city and partly at the cost or through contribution of the contractor as aforesaid in such proportion as may be agreed upon between the city and the contractor. Such contract for the equipment, maintenance and operation of such road or roads or any portion or portions thereof may be made and entered into as in this act provided before the consents shall have been obtained for any such road or roads or for any portion or portions thereof as provided in section five of this act, and before the detailed plans and specifications shall have been prepared as provided in section six of this act, provided, however, that in such case such contract for equipment, maintenance and operation of such road or roads or any portion or portions thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or roads or such portion or portions thereof unless and until the city shall acquire the right to construct such road or roads or portion or portions thereof by obtaining such consents. The public service commission may in any contract reserve the right, upon conditions and for compensation to the contractor, as provided in the contract, to permit other persons, firms and corporations and the municipality itself to use the tracks, structure and line equipment of the railroad, or any portions thereof. (*Subdivision amended by L. 1909, ch. 498; L. 1910, ch. 504, and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 3 renumbered 4 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

4. Every such contract shall further provide that the person, firm or corporation so contracting to equip, maintain and operate said road shall annually or at specified intervals pay into the treasury of said city, such rental for the use of said road, as shall be prescribed therein. The rental may be either a specified sum of money or a specified part or proportion of income, earnings or profits of such road, or both a sum of money and a part or proportion of income, earnings or profits, as the said commission shall deem best suited to the public interest and the board of estimate and apportionment or other analogous local authority of such city shall approve. Every such contract may further provide that the amount and character of such rental may be readjusted at the expiration of a prescribed period of not more than twenty years, and be readjusted from time to time in the future at intervals each of not more than twenty years, and may prescribe a method of determining by arbitration or by the court the amount to be paid upon any readjustment thereof. If such contract be made with a person, firm or corporation owning or actually operating or agreeing to operate a railroad or railroads wholly or in part within the limits of the city and shall make provision for the equipment, maintenance and operation of such road or roads of the city in connection with such railroad or railroads and for a single fare, the contract may provide that the gross receipts from the operation of such railroad or railroads within the limits of the city and from the operation of such road or roads of the city may be combined during the term of such contract and that the city shall receive for the use of the said road or roads at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined and the contract may, in such case, apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under such contract. In any such case the contract shall provide for determining the amount of the income, earnings or profits of the railroads whose gross earnings are so combined, and may authorize the retention, prior to the payment of any sums to the city for or on account of the city's investment in the construction of such road or roads or for the use of the same, of (a) a specified sum of money, which may represent the average annual income from operation of said railroad or railroads theretofore constructed during a period specified in such contract; (b) a sum not exceeding six per centum per annum for each year upon the investment of the contractor, including brokerage charges not exceeding three per centum, in the construction and equipment of the said road or roads of the city to be maintained and operated under such contract, and in the construction and equipment of extensions of any railroads and tracks not owned by the city thereafter constructed and to be operated under such contract; and (c) a sum not exceeding the annual expense or cost to the

§ 27. Contract for equipment, maintenance, etc. L. 1912, ch. 226.

contractor, plus one per centum per annum, on account of the contractor's investment in betterments or improvements upon, or additions to such road or roads of the city, and upon or to any railroads not owned by the city and operated under such contract, and upon or to the equipment thereof. Such contract may also provide that such payments shall be cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of the said gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city. The contract may provide for a readjustment at specified intervals of the part or proportion of the said income, earnings or profits of the railroads, which the city shall receive, or of the portion of the amount received by the city which shall be deemed to be the rental of each such road owned by the city, and may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its part or proportion of such income, earnings or profits or as such rental upon any such readjustment thereof. (*Subdivision amended by L. 1909, ch. 498 and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 4 renumbered 5 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

5. Such rental and the term for the operation of the railroad included in any such contract shall begin, as to said road, or any section thereof, at such time or times as may be provided in the contract. The aforesaid rental shall be paid at such times during each year or at such intervals as said commission shall require. If a contract to equip, maintain and operate such road be made with the person, firm or corporation having or to have the contract to construct the same and such contract shall provide that said road shall be constructed wholly or in part at the cost of the said person, firm or corporation, the said road, however, to be the property of the city in the same manner and to the same extent as if constructed wholly with public money, then the contract may provide as an alternative in lieu of the rental above provided for that any and all income and increase derived by the contractor or on his behalf in any manner from the enterprise of constructing, equipping, maintaining and operating such road, shall after deducting operating expenses, taxes, payments to reserve and amortization funds as provided for in the contract, and not exceeding six per centum interest per annum payable quarterly upon the actual cost to the contractor of construction and equipment of such road, be divided share and share alike between the contractor and the city. The rental and any sums payable under such contract, except any sum or sums of money that may be contributed toward the construction of any road or roads by the contractor having the contract for the equipment and operation of such road or roads, shall be applied first to the payment of the interest upon bonds issued by said city for the construction and equipment of said road as hereinafter

L. 1912, ch. 226.

Contract for equipment, maintenance, etc.

§ 27.

provided for, as the same shall accrue and fall due, and the remainder of said rental and moneys not required for the payment of said interest shall be kept separate and apart from any and all other moneys of such city and shall be securely invested and, with the annual accretions of interest thereon, shall constitute a sinking fund for the payment and redemption at maturity of the bonds issued as aforesaid; said rental, moneys and accumulations of said fund over and above so much as may be required for payment of interest and principal of said bonds as aforesaid, shall be paid into the rapid transit fund hereinafter provided for. (*Subdivision amended by L. 1909, ch. 498 and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 5, as amended by L. 1909, ch. 498 renumbered 6 by L. 1912, ch. 226, in effect Apr. 9, 1912.

Subdivision 6 renumbered 7 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

7. In case the title to the equipment of said road shall not be vested in the city, the city in and for which said road shall be constructed shall also have a first lien upon the rolling stock and other property of said contracting person, firm or corporation, constituting the equipment of said road and used or intended for use in the maintenance and operation of the same, as further security for the faithful performance by such contracting person, firm or corporation of the covenant, conditions and agreements of said contract, on his, their, or its part to be fulfilled and performed, and in case of the breach of any such covenant, condition and agreement said lien shall be subject to foreclosure by action, at the suit of such city, in the same manner, as far as may be, as is then provided by law in the case of foreclosure by action of mortgages on real estate. The commission may, however, from time to time, relieve from such lien, any of the property to which the same may attach, upon receiving additional security, which may be deemed by said commission to be the equivalent of that which it is proposed to release and otherwise upon such terms as to such commission shall seem just. (*Subdivision amended by L. 1909, ch. 498 and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 7 renumbered 8 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

8. The said contract shall further provide that in case of the failure or neglect on the part of said contracting person, firm or corporation, after such notice as the contract may prescribe, faithfully to observe, keep and fulfill the conditions, obligations and requirements of said contract, the said city, by the public service commission, may either terminate the contract or take possession of said road and the equipment thereof, and as the agent of said contracting person, firm or corporation, either maintain and operate said road, or enter into a contract with some other person, firm

or corporation for the maintenance and operation thereof, and the said contract shall contain such terms, conditions and provisions in relation thereto as the said commission shall deem necessary or desirable for adequately safeguarding and protecting the rights and interests of said city; and the said contract shall contain appropriate terms, conditions and provisions for accomplishing such termination or taking possession. (*Subdivision amended by L. 1909, ch. 498 and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 8 renumbered 9 and amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:

9. Any existing railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city in and for which said commission has power to act, and approved by the commission, shall be competent and is hereby authorized to enter into any contract for the equipment, maintenance and operation of any railroad pursuant to the provisions of this chapter, or, after such a contract shall have been made, shall be competent and is hereby authorized, with the approval of the commission, to contract with the original contractor or his assignee or assignees for the maintenance and operation (including the equipment or any part thereof) of any railroad constructed or in process of construction or to be constructed pursuant to the provisions of this chapter, and shall have all the powers necessary to the due performance of such contract. A corporation may be organized under the railroad law of this state, for the purpose of constructing, equipping, maintaining and operating a railroad pursuant to the provisions of this act or for the purpose of maintaining and operating a railroad (including the equipment or any part thereof) already constructed, in process of construction or to be constructed pursuant to the provisions of this act; and any corporation so organized, upon the approval in writing of the commission, shall, in addition to the powers conferred by the general act under which such corporation is organized, be empowered, and is hereby authorized to enter into any contract permitted by law for the maintenance and operation when constructed, including the equipment or any part thereof if desired, as the case may be, of any such railroad owned or to be owned by the city, constructed or to be constructed at the expense of the city or of such corporation or both as in this act provided. The certificate of such approval shall be filed in the office of the secretary of state, and a copy thereof certified to be a true copy by the secretary of state or his deputy, shall be evidence of the fact therein stated. A corporation so organized shall not be required to procure the consent of the public service commission as provided for in section nine of the railroad law. (*Subdivision amended by L. 1909, ch. 498 and renumbered and amended by L. 1912, ch. 226, in effect Apr. 9, 1912.*)

Subdivision 9, as amended by L. 1909, ch. 498, renumbered 10 by L. 1912, ch. 226, in effect Apr. 9, 1912.

§ 29. **Terms of contract for construction or operation.**—*Subdivision 3, amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:*

3. It shall be deemed to be part of every such contract that, in case the public service commission shall cease to exist, the legislature may provide what public officer or officers of the city shall exercise the powers and duties belonging to the commission under or by virtue of any such contract, and that in default of such provision, such powers and duties shall be deemed to be vested in the mayor of the city. Every such contract shall contain appropriate terms, conditions and provisions for safeguarding the interests of the city in the event of the failure or neglect of such contracting person, firm or corporation to construct, equip, maintain or operate the railroad according to the terms of the contract, and the public service commission may bring such action or actions in the name and in behalf of the city as may be necessary for the sufficient and just protection of the rights of the city; or may, upon such terms as to the public service commission seem just, and with such person or corporation as to the commission may seem proper, make another operating contract and lease of the said road for the residue of the term of the contractor in default; and may bring action in the name and on behalf of the city to recover from the contractor the amount due from the contractor, less the amount which shall have been received by the city, under or by virtue of such new contract, and for all other damages sustained by the city by reason of such default. (*Subdivision amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 33. **Extensions and additional lines.**—1. Whenever the said public service commission shall determine that the public interests so require, it may with the approval of the board of estimate and apportionment or other analogous local authorities of such city, without advertising for proposals, but only after a public hearing under section thirty-seven of this act, enter into a contract or contracts with the person, firm or corporation owning, operating or agreeing to operate, any existing rapid transit railroad or railroads for the construction, equipment, maintenance and operation, or for the equipment, maintenance and operation of any additional or proposed rapid transit railroad or railroads to be owned by the city for which necessary consents as provided in section five of this act shall have been obtained, provided that such proposed railroad or railroads shall be operated in conjunction with said existing railroad or railroads for a single fare. Such contract for the equipment, maintenance and operation of such road or roads or any portion or portions thereof may be made and entered into before consents shall have been obtained therefor as provided in section five of this act, provided, however, that in such case such contract for equipment, maintenance and operation of such road or roads or any portion or portions thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or roads or

such portion or portions thereof unless and until the city shall acquire the right to construct such road or roads or portion or portions thereof by obtaining such consents.

Such contract or contracts for construction, equipment, maintenance and operation or for equipment, maintenance and operation may be made in either of the two following ways:

(a) If such existing railroad be wholly or in part within the limits of the city, such contract may be made under and pursuant to the provisions of sections twenty-six, twenty-seven and twenty-nine, so far as the same shall be applicable, with the railroad corporation owning or actually operating or agreeing to operate such existing railroad, but the term for equipment, maintenance and operation of such proposed road, as specified in said contract, pursuant to said sections, shall not be for a period longer than the unexpired term of the franchise or contract for the maintenance and operation of such existing railroad and any renewals provided for in such franchise or contract.

(b) If such existing railroad be a rapid transit railroad constructed wholly or in part at the public expense under the provisions of this act and wholly or in part in operation such contract may be made with the person or corporation having the contract for the construction and operation of said existing rapid transit railroad by the terms of which the said proposed rapid transit railroad if not constructed or to be constructed by the commission under separate construction contracts shall be constructed as extra work under the terms of the said existing contract either without expense to the city or for such sum of money or such proportion of the actual cost thereof as may be agreed upon to be paid by such city for or toward the construction thereof, the said railroad when so completed as extra work to be subject to the terms and conditions of the said original contract except so far as shall be otherwise specified and agreed.

2. Every such contract for such construction, equipment, maintenance and operation or for such equipment, maintenance and operation of such proposed railroad made in either of the foregoing specified ways, shall also make provision that the city may, upon giving a specified notice, terminate the contract for equipment, maintenance and operation of any such proposed railroad as to all and if deemed advisable as to any specified portion or portions thereof at any time after the expiration of ten years from the date when operation of any part of such proposed railroad or of such specified portion thereof shall actually begin, but such right of termination of any such contract shall be upon condition as follows:

(1) If the title to the equipment of said proposed railroad or railroads shall not be vested in the city then that the equipment of the said proposed railroad or portion thereof suitable to and used for the purposes of such railroad as apportioned pursuant to the contract, shall be purchased and taken by the city at an amount which shall be ascertained as provided in

the contract, but which shall not be greater than the actual cost of the same, plus fifteen per centum thereof, and such equipment shall, upon such termination of said contract become and be the property of the city on paying to the contractor said amount; or in case the title to the equipment of said proposed railroad shall be vested in the city then that the city shall pay to the contractor an amount for his investment in the equipment of said proposed railroad, or portion thereof, which shall not exceed the actual cost to the contractor of equipment of said railroad or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid except that if additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the contractor's investment in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen per centum thereof and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract.

(2) Upon the further condition if such proposed railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of said proposed road or portion thereof, which shall not exceed the actual cost to the contractor of constructing said road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid, except that if betterments, additions or improvements shall be required by the commission or approved by the commission prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the contractor's investment in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

3. The contract shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's investment in the construction of said proposed road upon a termination by the city of such contract and for the equipment of said proposed railroad at the end of the full term of the contract, and may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation

of the contractor's said investment in the construction of said proposed road and of the equipment or any part or portion of either thereof for any purpose under said contract. The contract may provide that the title to the equipment as well as to said road shall vest in the city from the beginning and that the amount to be paid by the city for the contractor's investment in such equipment shall decrease as the term of the contract continues so that at the end of the full term of the contract no amount shall be payable therefor except for additional equipment as aforesaid. The contract shall provide that upon the expiration of the term fixed in the contract, the contract shall end without compensation to the contractor except as provided in the contract, for betterments, additions or improvements to any such railroads required to be made or approved by the commission prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of said contract to the amount, if any, ascertained as provided in the contract, and that in such event such equipment shall become the property of the city upon payment to the contractor of the said amount, or, if the title to the equipment be vested in the city, then an amount for the contractor's investment in additional equipment for any such railroads to be ascertained as provided in the contract.

4. The contract may also include a provision for modification of the lease or contract for equipment, maintenance and operation of said existing rapid transit railroad so that such last named lease or contract may be terminated by the city upon giving a specified notice at the same time and in connection with the termination of the contract as to such proposed railroad, but such right of termination of any such contract as to said existing rapid transit railroad shall be upon condition (1) that the equipment of the said railroad suitable to and used for the purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but shall not be greater than the actual cost of the same plus fifteen per centum thereof, and such equipment shall, upon such termination of such contract, become and be the property of the city on paying to the contractor such amount, and (2) upon the further condition, if said existing railroad shall have been constructed wholly or in part at the cost of the contractor, that the city shall also pay to the contractor or to his assignee in possession an amount for the investment in the construction of said existing road which shall not exceed the actual cost to the contractor of constructing such road, plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues, so that at the end of the full term of the contract, and of any renewal thereof contained therein, no such amount shall be paid. The contract as so modified shall provide a method of ascertaining the amount to be paid for said equipment and for the contractor's investment in the construction of said road upon a termination

by the city of said contract, and for the equipment of said existing railroad at the end of the full term of the contract; and may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of the contractor's said investment in the construction of said road and of the equipment, or any part or portion of either thereof, for any purpose under said contract. The contract may also provide for assuring that in case a new contract for equipment, and for maintenance and operation of said existing rapid transit railroad, or proposed rapid transit railroad, is made after such termination, pursuant to notice, or after the expiration of the full term of such contract, that the title to and possession of the equipment so taken and the right to the possession of the railroad or railroads so constructed may be transferred directly to the new contractor upon his paying the amount so required. (*Amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 34. Termination of right, franchise or contract.—*Subdivision 2, amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:*

2. Every grant or contract made under the provision of this article by the terms of which the city in lieu of rental shall be entitled to a portion of income or increase derived from the enterprise shall make provisions for definition and determination from time to time of the items to be included in operating expenses, taxes, payments to reserve and amortization funds and for the percentages or amounts to be set aside therefor and for interest upon construction cost. The commission shall prescribe in the grant or contract a period for amortization by the grantee or contractor of the actual cost of plant and property other than equipment, or actual cost to the contractor of the construction of such road, and the period so prescribed shall end with the term of the grant. Any and all sums of moneys hereafter received by the city from or under any grant or contract heretofore or hereafter made under the provisions of this act, over and above such sum or sums as are required by law to be paid into a sinking fund to meet the payment of interest or principal on city bonds issued for construction and equipment of any railroad pursuant to any such contract, and except any sum or sums of money that may be contributed toward the construction of any road or roads by the contractor having the contract for the equipment and operation of such road or roads, shall be kept separate and apart from any and all other moneys of such city and paid into a fund to be known as the rapid transit fund, and shall be applied under the direction of the board of estimate and apportionment or other analogous local authority of such city only to or toward the construction of railroads, or the purchase of plant and property or equipment of railroads, pursuant to the provisions of this act, or to deficiencies in the operation or rental of railroads owned by the city, or in the operation of railroads owned and operated by the city pursuant to this act. (*Amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 38. **Modification of contracts.**—The public service commission for and on behalf of the said city in which such road or roads may be constructed, may, from time to time with the consent, in writing, of the bondsmen or sureties of the person, firm or corporation which has contracted with said commission or its predecessors to construct, equip, maintain or operate any road or roads, agree with the said contracting person, firm or corporation upon changes in and modifications of said contract, or of the plans and specifications upon which said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section five of this act shall be made without the further consent and authorization provided for in said section. (*Amended by L. 1909, ch. 498 and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

§ 39. **Acquisition of property.**—*Subdivision 1, amended by L. 1912, ch. 226, in effect Apr. 9, 1912, as follows:*

1. For the purpose of constructing or operating any road for the construction or operation of which a contract shall have been made by the board of rapid transit railroad commissioners or the public service commission, including necessary stations and station approaches, or for the purpose of operating or securing the operation of the same free of interference and right of interference and of action and right of action for damages and otherwise, whether by abutting owners or others, or to provide, lay or maintain conduits, pipes, ways or other means for the transmission of electricity, steam, water, air or other source or means of power or of signals or of messages necessary or convenient for or in the construction or operation of such road, or for the transportation of materials necessary for such construction or operation, or to provide a temporary or permanent way or course for any such conduit, pipe or other means or source of transportation, said commission for and in behalf of said city may acquire, by conveyance or grant to said city to be delivered to the said commission and to contain such terms, conditions, provisos and limitations as the said commission shall deem proper, or by condemnation or other legal or other proceedings, as in this act provided, any real estate and any rights, terms and interests therein, any and all rights, privileges, franchises and easements, including such of any thereof as may be already devoted to a public use, whether of owners or abutters, or others to interfere with the construction or operation of such road or to recover damages therefor, which, in the opinion of the commission, it shall be necessary to acquire or extinguish for the purpose of constructing and operating such road free of interference or right of interference. (*Amended by L. 1909, ch. 498, and L. 1912, ch. 226, in effect Apr. 9, 1912.*)

REAL PROPERTY LAW.

(L. 1909, ch. 52.)

§ 38. Definition of remainder.

See *Matter of Dobson* (1911), 73 Misc. 170, 132 N. Y. Supp. 472.

§ 40. When future estates are vested; when contingent.

In general.—Where a testamentary gift is found only in a direction to divide a fund at a future time the gift is future and contingent and not vested. But this rule is subordinate to the primary canon for the construction of wills, that the intention of the testator as collected from the whole instrument must prevail, and, if the application of the subordinate rule would defeat the testator's intention, it must give way. *Whitwell v. Whitwell* (1911), 146 App. Div. 270, 130 N. Y. Supp. 906.

Vested remainder.—Under a will, which after placing lands in trust, income to the testator's wife for life, directs the executors to continue the trust on the widow's death, income to the maintenance of a son for life, "and upon his decease" the trustees to "convey" to a daughter and another son, the remaindermen take vested rather than contingent remainders. *Hutchings v. Hutchings* (1911), 144 App. Div. 757, 129 N. Y. Supp. 622.

Vested legacy.—*Woodruff v. Woodruff* (1911), 72 Misc. 249, 252, 129 N. Y. Supp. 860.

Contingent remainder.—Where a testator devised an undivided two-thirds of his realty to trustees to pay the income to his daughter during her life and during the life of her mother, with a provision that upon the death of either of said persons the corpus should be paid over to the survivor, the trustees have legal title only during the lifetime of the one of the two persons named who shall die first, and there is a contingent remainder vesting immediately in possession of the one who survives the death of the other. *Pattison v. Cusack* (1911), 147 App. Div. 428, 131 N. Y. Supp. 795.

§ 42. Suspension of power of alienation.

Unlawful suspension.—The taint of unlawful suspension of absolute ownership may not be communicated to the other provisions of a will. *Matter of Lang* (1911), 72 Misc. 589, 131 N. Y. Supp. 991.

An unincorporated church cannot take lands by devise, and a devise of lands to trustees to be conveyed to such church if it becomes incorporated within one year and eleven months from the time of testator's death is an attempt to effect an unlawful suspension of the power of alienation and is invalid. The direction to the trustees contained in the same will to convey to the incorporated church of which the former unincorporated church was a branch or mission at the end of two years, if the mission church did not become incorporated within the period mentioned, does not create a trust for the benefit of the incorporated church; but, the former church not having been incorporated and, therefore, unable to take at the testator's death, no title passes to the trustees but the title vests at once in the incorporated church. *Washburn v. Acome* (1911), 74 Misc. 301, 131 N. Y. Supp. 963.

Trusts held not to suspend the power of alienation. *Pryer v. Pryer* (1911), 145 App. Div. 928 (mem.).

A deed placing lands in trust until such time as the survivor of two beneficiaries in being at the time of the creation of the trust shall die does not violate the statute against perpetuities, even though it provide that at the termination of the trust the lands shall be divided among the heirs of the beneficiaries named. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860.

§ 44. Remainders on estates for life of third person.

Whether a remainder is well limited on a life estate which fails is an open question since the revised statute. *Matter of Hansen* (1911), 72 Misc. 610, 132 N. Y. Supp. 257.

§ 63. Undisposed profits.

Application of rule as to undisposed profits applies to personalty also. *Matter of Harteau* (1912), 204 N. Y. 292; *Bloodgood v. Lewis* (1911), 146 App. Div. 86, 92.

§ 66. When estate in common; when in joint tenancy.

A tenancy by the entirety can only exist where there is a valid marital relation between the grantees at the time of the conveyance. Although a conveyance is made to a man and woman in the form, "husband and wife, as tenants by the entirety," they do not take as tenants by the entirety with a right of survivorship; when in fact, although living together, there was no marriage between them, one of the parties being bound by an existing marriage. *Perrin v. Harrington* (1911), 146 App. Div. 293, 130 N. Y. Supp. 944.

Status of tenants by the entirety.—Husband and wife as tenants by the entirety do not hold as tenants in common or as joint tenants. Each is seized of the entirety *per tout et non per my*, and upon the death of either the survivor takes all, not by virtue of survivorship simply, but by virtue of the original grant which vested the entire estate in each grantee. Where one of two tenants by the entirety died before the enactment of the statute allowing abutting owners damages caused by a change of grade in the streets of New York, the survivor having title to the whole parcel was entitled to all the damages caused by the change of grade, for the right did not accrue until the act was passed. *People ex rel. Bennett v. Dickey* (1912), 148 App. Div. 663.

Tenants by the entirety during their joint lives are each entitled, as tenants in common, to one-half the rents and income. *Mackotter v. Mackotter* (1911), 74 Misc. 214, 131 N. Y. Supp. 815.

§ 92. When right to possession creates legal ownership.

While the same person cannot be at the same time trustee and beneficiary of the same interest, the fact that a trustee has a beneficial interest in real estate does not prevent him from taking charge of the same for himself and others having a like interest, and one, having a one-third interest in lands, may hold the same on a trust to manage two-thirds of the property for other beneficiaries. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860.

§ 94. Grant to one where consideration paid by another.

Purchase of land by husband.—The mere fact that a husband with the knowledge and consent of his wife paid the consideration for and procured the title to lands to be taken in his wife's name for the purpose of placing the lands beyond the reach of creditors does not create a resulting trust. *Binkowski v. Moskiewitz* (1911), 144 App. Div. 161, 128 N. Y. Supp. 803.

§ 96. Purposes for which express trusts may be created.

Trust to collect rents and profits for beneficiary.—A trust deed, requiring the trustee to pay the net rents and profits of lands to beneficiaries monthly is a valid trust as a fair construction of such deed clothes the trustee with power to collect. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860.

See generally *Washburn v. Acome* (1911), 74 Misc. 301, 306, 131 N. Y. Supp. 963.

§ 97. Certain devises to be deemed powers.

See *Fogarty v. Stange* (1911), 72 Misc. 225, 129 N. Y. Supp. 610.

§ 99. When an authorized trust is valid as a power.

See *Washburn v. Acome* (1911), 74 Misc. 301, 306, 131 N. Y. Supp. 963.

§ 105. When trustee may convey or exchange trust property.

Sale of decedent's real property for the payment of his debts held to be unauthorized under this section. *Matter of Easterly* (1911), 202 N. Y. 466.

§ 107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.

Amendment of 1907.—The opinion in this case (202 N. Y. 466) was not intended to construe or interpret the amendment which was made by chapter 242 of the Laws of 1907 to section 87 (now 107) of the Real Property Law. *Matter of Easterly* (1912), 204 N. Y. 30 (mem.).

§ 109. When estate of trustee ceases.

See *Fogarty v. Stange* (1911), 72 Misc. 225, 129 N. Y. Supp. 610.

§ 112. Resignation or removal of trustee and appointment of successor.

Appointment of trustee by court.—If a trustee is disqualified for any reason from acting as such, the trust vests in the Supreme Court which will appoint its agent to carry it out. *Ogilby v. Hickok* (1911), 144 App. Div. 61, 128 N. Y. Supp. 860.

§ 113. Grants and devises of real property for charitable purposes.

Construction and application.—The spirit of love and religion which is the basis of charity should be exercised in construing the provisions of such acts. A will, however, must sufficiently define the beneficiaries and the purpose of the testator so that the trust can be enforced by the courts, otherwise the will does not come within the provisions of the statute. The gifts must be also for a public and not for a private purpose. *Matter of Robinson* (1911), 203 N. Y. 380.

In this case the beneficiaries and the trust were held not to be indefinite. *Starr v. Selleck* (1911), 145 App. Div. 869, 130 N. Y. Supp. 693.

Indefinite and uncertain purposes.—A bequest to one with the added words, "it being understood between us that she is to spend said amount in charity, both in the Kingdom of Italy and in the City of New York, U. S. A.," is not a personal bequest to the legatee, but was intended to be held by her in trust and used for purposes so indefinite and uncertain as to render the gift void. *Matter of Philbrick* (1911), 74 Misc. 327.

A bequest to an individual to be used "in the Lord's work" does not sufficiently indicate the charitable purpose to which the testator desired to apply the gift to enable the Supreme Court to administer the trust. *Matter of Compton* (1911), 72 Misc. 289.

Non-resident beneficiaries.—Trusts otherwise valid under this section and under section 12 of the Personal Property Law, may be sustained although the beneficiaries are not necessarily or in terms confined to residents of this state. *Matter of Robinson* (1911), 203 N. Y. 380, 389.

A bequest to an unincorporated benevolent or charitable association for its own use and not in trust for another is invalid. *Matter of Compton* (1911), 72 Misc. 289, 131 N. Y. Supp. 183.

A bequest of personal property in trust to be used for free scholarships in an

§§ 149, 151, 153, 166, 196, 201, 204. Decisions.

incorporated theological school situated in the Republic of France is a legal bequest for charitable use under the law of this state. Such bequest does not fail because of the fact that prior to the death of the testatrix the so-called Separation Law of France was passed whereby the beneficiary was disestablished and ceased to be a government institution, if in fact it continued to exist under said act as an independent school of theology maintaining scholarship students. Neither does the trust fail because of the fact that the foreign institution may not be entitled to take legal title as trustee under the French law, for equity will not allow a trust to fail for want of a trustee. Under the circumstances the trust fund will be administered by the Supreme Court of this state and the proceeds transmitted to the foreign beneficiary. *Matter of Miller* (1912), 149 App. Div. 113.

The validity of a bequest of personal property located here made by a resident of this state is to be determined by the laws of this state. *Matter of Miller* (1912), 149 App. Div. 113.

§ 149. When estate for life or years is changed into a fee.

See *Stafford v. Washburn* (1911), 145 App. Div. 784, 130 N. Y. Supp. 571.

§ 151. When grantee of power has absolute fee.

See *Stafford v. Washburn* (1911), 145 App. Div. 784, 130 N. Y. Supp. 571.

§ 153. When power of disposition absolute.

See *Stafford v. Washburn* (1911), 145 App. Div. 784, 130 N. Y. Supp. 571.

§ 166. Execution by survivors.

See *Danaher v. Hildebrand* (1911), 72 Misc. 240, 131 N. Y. Supp. 127.

§ 196. When dower barred by misconduct.

Obtaining a divorce in another state upon grounds other than adultery does not deprive the wife of her dower in lands owned by the former husband in this state. *Van Blaricum v. Larson* (1911), 146 App. Div. 278, 130 N. Y. Supp. 925.

§ 201. When deemed to have elected.

When widow must elect.—Where the provisions in a will for the benefit of a widow and her claim to dower are so inconsistent that to enforce one would destroy the other, she is put to an election as to which she will take. *Matter of Tallor* (1911), 147 App. Div. 741, 751.

When widow presumed to have elected.—Where a widow does not comply with this section, for the purpose of a transfer tax proceeding she will be presumed to have elected to take under the will, unless she is entitled to her dower in addition to the testamentary provision made for her. *Matter of Stuyvesant* (1911), 72 Misc. 295, 131 N. Y. Supp. 197.

§ 204. Widow's quarantine.

In a proceeding to distribute surplus moneys arising upon a mortgage foreclosure, the widow of a mortgagor, who continued in the possession of the mortgaged premises during the period between the expiration of her quarantine and the delivery of the referee's deed, is chargeable with only two-thirds of the value of such use and occupation. *Shueler v. Levi* (1911), 73 Misc. 25, 130 N. Y. Supp. 600.

Where a widow occupies the premises for more than the forty days, and subsequently elects not to take under her husband's will, giving her the property for life at her election, her possession after such election will not avail her in the federal courts as against the legal title as affecting the right to the appointment of a re-

ceiver of the property. Her election was tantamount to a refusal to occupy the premises and she may be required to vacate them. *Underground Electric Rys. Co. v. Orosley*, 169 Fed. 671 (1909).

§ 240. Definitions and use of terms.

Intention to create a tenancy other than a tenancy in common must be given effect, if such intention can be gathered from the whole instrument, and is consistent with the rules of law. *Perrin v. Harrington* (1911), 146 App. Div. 294.

§ 241. Ancient conveyances abolished.

Satisfaction piece is a conveyance.—An instrument in satisfaction of a mortgage is a conveyance within the protection of the Recording Act. *Assets Realization Co. v. Clark* (1912), 205 N. Y. 105, 119.

There is some question whether the words "from the same vendor, his heirs or devisees" are in force. While chapter 547, Laws of 1896, enacted the section in full and repealed that portion of the Revised Statutes containing the section then substantially being reproduced, except that the quoted words were added, at the same session of the Legislature was passed chapter 572, which amended the section of the Revised Statutes which had been repealed by the Real Property Law, and thereby, it seems, re-enacted it without the words quoted. *Assets Realization Co. v. Clark* (1912), 205 N. Y. 105, 119.

§ 242. When written conveyance necessary.

In order to prevent the Statute of Frauds from being used as a means of fraud, courts of equity will sometimes enforce a parol agreement for a re-conveyance of lands, and, after default in the performance of the agreement, will regard the grantee as a trustee *ex maleficio*. *Simis v. Simis* (1911), 146 App. Div. 655, 131 N. Y. Supp. 460.

For effect of verbal assignment of written lease see *Crowe v. Baumann*, 190 Fed. 399 (1911).

§ 250. Mortgages on real property inherited or devised.

Application.—*Matter of Roberts* (1911), 72 Misc. 625, 132 N. Y. Supp. 396.

§ 253. Construction of covenants in grants of freehold interests.

A covenant of warranty runs with the land and an eviction actual or constructive by an elder title constitutes a breach. A cause of action accrues upon a breach of such covenant to a remote grantee against the original covenantor. As such action for breach of warranty is based upon the privity of estate rather than upon privity of contract, the action is local and must be brought in the courts of the state where the land is situated. Hence, the courts of this state have no jurisdiction of an action against a domestic corporation for breach of such warranty brought by a remote grantee where the lands are situated in a foreign state. *Keyes & Marshall Bros. Realty Co. v. Trustees Canton College* (1911), 146 App. Div. 796, 131 N. Y. Supp. 527.

A covenant against incumbrances is treated as a contract of indemnity, and although it is broken, if broken at all, as soon as made, the covenantee is entitled to nominal damages only until he actually suffers loss, but in that case he is entitled to complete indemnity for the amount of the loss. *King v. Union Trust Co.* (1911), 148 App. Div. 110.

In an action on a breach of a covenant against incumbrances, the plaintiff's damages are not limited to the amount that may have been due on the lands when he purchased them, but what he has been obliged to pay to relieve them from the burden. The covenant is treated as one of indemnity, and although broken as

§§ 259, 260, 263, 268, 291.

Decisions.

soon as made, if broken at all, a recovery, beyond nominal damages, is confined to the actual loss sustained by the covenantee by reason of the breach. If he has extinguished an incumbrance, he is entitled to recover the cost of so doing. *Dinenny v. Brown* (1912), 148 App. Div. 671.

§ 259. When contract to lease or sell void.

Lease by husband of owner.—Where the husband of the owner of real property makes a lease of it in writing and signs the lease in his own name and the wife ratifies and confirms it by receiving the rent with knowledge of the facts, she may not afterwards repudiate the lease and treat the tenancy as a tenancy from month to month. *Matter of Di Marti* (1911), 72 Misc. 148, 129 N. Y. Supp. 81.

§ 260. Effect of grant or mortgage of real property adversely possessed.

Application.—*Collins v. Buffalo, Lockport & Buffalo R. Co.* (1911), 145 App. Div. 148, 129 N. Y. Supp. 139.

A deed given while another is in possession of the property claiming under an adverse title, although void as against the person in possession, is good as between the parties to the deed. *Sheridan v. Cardwell* (1911), 145 App. Div. 609, 130 N. Y. Supp. 638.

The statute does not apply to judicial sales of an interest in real estate held adversely when ordered by a court of competent jurisdiction. *In re Downing*, 192 Fed. 683 (1912).

§ 263. Conveyances with intent to defraud creditors.

Conveyance by husband to wife.—Where a husband made a gift of real property to his wife and, having received the consideration of a subsequent sale made by her, bought other real property and had title conveyed to her, and after the wife again sold her real property and the husband had received the consideration he purchased other property and subsequently conveyed it to her, she must be considered to be a purchaser from him for a valuable consideration, although the express consideration for the last conveyance was love and affection and two dollars. *King v. Union Trust Co.* (1911), 148 App. Div. 110.

§ 268. Disaffirmance of fraudulent act by executor and others.

The creditor of a decedent may sue on his own behalf and for the benefit of all other creditors of the decedent to set aside conveyances formerly made by the decedent for the purpose of defrauding creditors without a prior demand on the debtor's executor to bring the suit. *Calkins v. Stedman* (1911), 146 App. Div. 202, 130 N. Y. Supp. 932.

§ 291. Recording of conveyance.

Notice of unrecorded conveyance.—A recital in a recorded instrument as to another unrecorded conveyance is not notice under the recording acts of the unrecorded conveyance. *People's Trust Co. v. Tonkonogy* (1911), 144 App. Div. 333, 128 N. Y. Supp. 1055.

A mortgage duly recorded is notice of its terms and conditions, as well as of those of the accompanying bond, which was a part of it. *Universal Trust Co. v. Bochan-ski* (1912), 75 Misc. 317, 320.

Confession of judgment and mortgage; when equal liens.—Where, on the same day that one acknowledged and delivered a confession of judgment, he acknowledged and delivered to another creditor a mortgage upon his real estate, both the mortgage and the confession of judgment, in the absence of intention to give a preference, will be declared equal liens, though the mortgage was not recorded until after the confession of judgment was docketed. *Adirondack Hardware Co. v. Walsh* (1911), 74 Misc. 594.

L. 1912, ch. 254.

Acknowledgments; discharge of mortgage.

§§ 301, 303, 322.

§ 301. **Acknowledgments and proofs in foreign countries.**—*Subdivision 9, added by L. 1912, ch. 70, in effect Mch. 25, 1912, as follows:*

9. If within the empire of Austria, kingdom of Hungary and kingdoms, states, territories and provinces comprising the monarchy of Austria-Hungary, it may also be made before a judge or clerk of a court of record under the seal of such court or before an imperial royal notary or royal notary under the seal of his offices and the seal of the city or town in which such notary resides.

§ 303. **Requisites of acknowledgments.**

Form and sufficiency of acknowledgment.—A certificate of acknowledgment which states that at a specified time and place "before me personally appeared" certain persons named, "to me known and known by me to be the parties executing the foregoing instrument and acknowledged that said instrument by them executed to be their free act and deed," is defective in that it fails to state as required by the statute that the parties appearing were the persons described in and who executed the instrument. This is true although the persons named in the acknowledgment bear the same names as the persons named in the body of the instrument. *Gross v. Rowley* (1911), 147 App. Div. 529, 132 N. Y. Supp. 541.

§ 322. **Recording discharge of mortgage in counties embraced in cities of first class.**—In counties wholly embraced in a city of the first class, no mortgage shall be discharged of record, unless in addition to the certificate provided and required by the preceding section, there shall be presented to the recording officer for cancellation the original mortgage, or a certified copy of an order made and entered as hereinafter provided. The said officer shall, at the time of the discharge of said mortgage, cancel said original mortgage by effacing the signatures thereto, without obliterating the same, and shall file the same in his office and keep the same so filed for the term of ten years. If for any reason said mortgagee, his personal representative or assign can not produce said original mortgage, the said officer shall not discharge said mortgage until there shall be delivered to him a certified copy of an order made and entered as hereinafter provided, which order shall be recorded and filed with the certificate of discharge, or the substitute for said certificate of discharge hereinafter referred to, and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by an officer upon the record thereof. Where the mortgage shall have been lost, mutilated or destroyed, or upon which the signature or signatures are wholly obliterated or removed, or where for any reason production of said mortgage is rendered impossible or is refused by the person having the same in his possession, any person having any interest in securing the discharge of the same may apply to the supreme court or the county court in or of the county in which property affected by the mortgage, or any part thereof, is situated, upon a petition duly verified, containing the name and address of the owner of the property covered by the mortgage, the name and address of the owner of the bond and mortgage, to the best of the petitioner's knowledge and

belief, and the owner thereof as appears of record, a full description of the mortgage and of any assignments thereof, that may appear upon the record, including the names of the mortgagor, mortgagee, assignor, assignee, date, amount, and the place, book, page and time of record of said mortgage and any assignments thereof, and a description of the property affected thereby, and showing the loss, mutilation or destruction of the mortgage, or obliteration or removal of the signature or signatures thereon or therefrom, or the impossibility of producing said mortgage, or the refusal to produce the said mortgage by the person having the same in his possession, and the interest of the petitioner in the property or the mortgage, for an order dispensing with the production of the said mortgage and directing the discharge thereof. Eight days' personal notice of the application for such order shall be given to the then present owner of the real estate, and the mortgagor, the mortgagee, his or their personal representatives, heirs, successors or assigns as the case may require, except that where any of the parties upon whom service is herein required to be made can not with due diligence be personally served, the court to which the petition is presented may direct such mode of service as may appear proper. If sufficient cause be shown, the court may issue an order to show cause upon the petition returnable in less than eight days. Upon the return day of such notice or order to show cause, the court, upon due proof of service of the notice, or order to show cause, upon the parties above specified, and on further proof of the identity of the person presenting the petition, shall inquire, in such manner as it may deem advisable, into the truth of the facts set out in the petition, and upon proof satisfactory to the court that said mortgage has been lost, mutilated or destroyed, or that the signature or signatures have been obliterated or removed thereon or therefrom, or that the production of said mortgage is impossible, or that its production is refused by the person having the same in his possession, and as to identity of the mortgagee, his personal representatives or assigns, and such proof in relation thereto as to the court may seem desirable, the court shall make an order dispensing with the production of the mortgage and directing its cancellation of record, as hereinabove provided. In case the mortgagee, his personal representatives or assigns, shall not appear in court upon the return day of said notice or order to show cause, or shall refuse or neglect, if present, to give the certificate for discharge above specified, the court may direct the amount due upon said bond and mortgage to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part, and the mortgage to be cancelled of record in all counties where any of the lands affected by said mortgage are situated upon the production of a certified copy of the order and the receipt of such officer showing that the amount of said mortgage has been deposited with him, which receipt shall be a substitute for the certificate of discharge above specified. If in the proceedings had under and in pursuance of this section it shall appear to the satisfaction

L. 1912, ch. 300.

Lands for cemeteries.

§§ 383, 391, 451.

of the court that the principal sum and interest due upon said mortgage, or the bond accompanying the same has been fully paid, then the said deposit of money hereinabove provided for shall be dispensed with. The money deposited shall be payable to the mortgagee, his personal representatives or assigns, upon an order of the supreme or county court directing the payment thereof to him, made upon such evidence as to his right to receive the same as shall be satisfactory to the court. (*Amended by L. 1912, ch. 254, in effect Apr. 10, 1912.*)

§ 383. Filing of caution.

An abutting owner who has filed a cautionary notice is a necessary party defendant, and must be brought in by the plaintiff even though he claims no right, interest in or lien upon the land sought to be registered. But, in the absence of such cautionary notice, he is not a necessary party. *It seems*, that where a person who has a right to appear in such action has not been named as a defendant by the plaintiff, the orderly practice is for him to enter his appearance, demand a copy of the complaint, and to answer it within the time allowed. *Sundermann v. People* (1911), 148 App. Div. 124.

§ 391. Judgments and orders conclusive.

Effect of judgment.—The action is *in rem*, and the judgment entered therein is conclusive upon all the world. *Sundermann v. People* (1911), 148 App. Div. 124.

§ 451. Acquisition of lands for cemetery purposes in certain counties.—It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Rockland, Suffolk or Nassau for cemetery purposes without the consent of the board of supervisors for such county, or of the board of aldermen of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or board of aldermen in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require. (*Amended by L. 1912, ch. 300, in effect Apr. 13, 1912.*)

REFORMATORY.

See State Reformatory (for misdemeanants).

RELIGIOUS CORPORATIONS LAW.

(L. 1909, ch. 53.)

§ 12. Sale, mortgage and lease of real property of religious corporations.—

A religious corporation shall not sell or mortgage any of its real property without applying for and obtaining leave of the court therefor pursuant to the provisions of article four of the general corporation law. The trustees of an incorporated Protestant Episcopal church shall not vote upon any resolution or proposition for the sale, mortgage or lease of its real property, unless the rector of such church, if it then has a rector, shall be present, and shall not make application to the court for leave to sell or mortgage any of its real property without the consent of the bishop and standing committee of the diocese to which such church belongs; but in case the see be vacant, or the bishop be absent or unable to act, the consent of the standing committee with their certificate of the vacancy of the see or of the absence or disability of the bishop shall suffice. The trustees of an incorporated Roman Catholic church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar-general or administrator of such diocese. The petition of the trustees of an incorporated Protestant Episcopal church or Roman Catholic church shall, in addition to the matters required by article four of the general corporation law to be set forth therein, set forth that this section has also been complied with. But lots, plats or burial permits in a cemetery owned by a religious corporation may be sold without applying for or obtaining leave of the court. No cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes. Except as otherwise provided in this chapter in respect to a religious corporation of a specified denomination, any solvent religious corporation may, by order of the supreme court obtained as above provided in proceedings to sell, mortgage or lease real property, convey the whole or any part of its real property to another religious corporation, for a consideration of one dollar or other nominal consideration, and for the purpose of applying the provision of article four of the general corporation law, a proposed conveyance for such consideration shall be treated as a sale, but it shall not be necessary to show, in the petition or otherwise, nor for the court to find, that the pecuniary or proprietary interest of the grantor corporation will be promoted thereby; and the interests of such grantor shall be deemed to be promoted if it appears that religious or charitable objects generally are conserved by such conveyance; provided, however, that such an order shall not be made if tending to impair the claim or remedy of any creditor. If a sale or mortgage of any real property of any such religious corporation has been heretofore or shall be hereafter made and a conveyance or mortgage executed

and delivered without the authority of a court of competent jurisdiction, obtained as required by law, or not in accordance with its directions, the court may, thereafter, upon the application of the corporation, or of the grantee or mortgagee in any such conveyance or mortgage or of any person claiming through or under any such grantee or mortgagee, upon such notice to such corporation, or its successor, and such other person or persons as may be interested in such property, as the court may prescribe, confirm said previously executed conveyance or mortgage, and order and direct the execution and delivery of a confirmatory deed or mortgage, or the recording of such confirmatory order in the office where deeds and mortgages are recorded in the county in which the property is located; and upon compliance with the said order such original conveyance or mortgage shall be as valid and of the same force and effect as if it had been executed and delivered after due proceedings had in accordance with the statute and the direction of the court. Such confirmatory order shall be granted only on proof, by petition or otherwise, satisfactory to the court granting the order, that an original proceeding was instituted and showing in what respect such original proceeding was defective, the facts applicable to the said defects and the conditions existing at the time of the application for the confirmatory order. But no confirmatory order may be granted unless the consents required in the first part of this section for a Protestant Episcopal or Roman Catholic church have first been given by the prescribed authority thereof, either upon the original application or upon the application for the confirmatory order. (*Amended by L. 1912, ch. 290, in effect Apr. 12, 1912.*)

Application.—This section refers only to the procedure necessary in the case of a voluntary sale or disposition by a religious corporation of its own property. The fact that a religious corporation is the holder of one or more undivided shares of property does not forbid the maintenance of an action in partition. *New York Home M. Society v. First F. Baptist Church* (1911), 73 Misc. 128, 130 N. Y. Supp. 879.

SARATOGA MONUMENT.

See Monuments.

SAVINGS BANKS.

Investments; Banking L., § 140.

SECOND CLASS CITIES LAW.

(L. 1909, ch. 55.)

§ 79. **Contracts and expenditures prohibited.**—No officer, board or department shall, during any fiscal year, expend or contract to be expended any money or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the annual estimate in excess of the amounts appropriated in said estimate, as adopted by the common council, for such officer, board, department or purpose, for such fiscal year. Any contract, verbal or written, made in violation of this section shall be null and void as to the city, and no moneys belonging to the city shall be paid thereon, provided, however, that nothing herein contained shall prevent the making of contracts for light or water, the collection and disposal or the disposal of garbage, the collection and removal of rubbish and ashes, the cleaning of streets, or the sprinkling of streets or public places by railway cars, for periods exceeding one year.

Nothing herein contained, however, shall be held to prohibit the commissioner of public safety from expending such sums or incurring such debts, as may be actually necessary to prevent the spread of, or to suppress any contagious or infectious disease, or any epidemic in the city, in addition to the amount appropriated for such purpose. (*Amended by L. 1912, ch. 195, in effect Apr. 5, 1912.*)

§ 91. **Powers and duties of commissioner.**—The commissioner, subject to the provisions of law and ordinances of the common council, has cognizance, direction and control of the construction, maintenance, alteration, repair, care, cleaning, paving, flagging, lighting and improving of the streets, highways, sidewalks and public places of the city; of the construction, alteration and repair of all city buildings and of all docks and bridges belonging to the city; of all public sewers and drains in the city; of the construction, maintenance, extension, repair and care of the city waterworks; of the care, superintendence and management and improvement of all parks and grounds, public baths and recreation piers belonging to the city. Except as otherwise provided by law, the commissioner shall have supervision of, control over and jurisdiction and authority to make all ordinary repairs or improvements upon the streets, parks, sidewalks, crosswalks, gutters, vaults, drains, culverts, bridges and public ways and places of the city, including the cleaning, sprinkling, laying of dust with substances other than water, watering and flushing of the same, and may employ such laborers and teams and incur such expenditures as may be necessary within the limits of the appropriations made therefor. It shall be his duty to inspect the same with sufficient frequency to ascertain their condition and cause the same to be kept free from obstructions and in good condition and repair

L. 1912, ch. 189.

Board of contract and supply.

§§ 120, 124.

and reasonably safe for public use. The commissioner shall also have general supervision and control of all work performed under any contract of the city for local or other improvements to be performed within or upon any of the public streets, parks, ways and places, or with reference to the public works and ways within the jurisdiction of his department, including the lighting, sprinkling, laying of dust with substances other than water, watering or flushing of the streets or public places, and shall cause the same to be performed in full compliance with the provisions of any contract therefor. Except as otherwise provided by law or ordinance of the common council, the commissioner of public works has, over the streets and public places within the city, all the jurisdiction and is charged with all the duties of commissioners of highways within the towns of the state. (*Amended by L. 1912, ch. 189, in effect Apr. 5, 1912.*)

§ 120. Board of contract and supply.

Sufficiency of specifications—lowest bidder.—There is no failure to comply with the requirement of this section that, where a municipal contract exceeding \$250 in cost is let, the specifications shall "set forth with sufficient detail to inform all persons proposing to bid therefor of the nature of the work to be done and of the materials to be supplied," merely because the specifications for a hospital building contained a provision that if rock were encountered in excavating the contractor must state in his bid the extra cost per cubic yard of removing the same, where the relative cost of removing the rock was insignificant. One who bid for the entire work, asking no extra compensation for the removal of rock, is entitled to the contract as against one who bid for the structure, although twelve dollars less, was actually the larger bid by reason of the fact that he claimed extra compensation for excavating rock. Where the lowest bidder on a municipal contract has no remedy at law for the refusal of the municipal authorities to execute a contract which they have drawn up awarding the work to him, he is entitled to a writ of mandamus compelling them to execute it. *People ex rel. Lynch v. Lennon* (1911), 147 App. Div. 538.

Right to reject bids.—Where pending the formal acceptance by the board of contract and supply of the city of Yonkers, a city of the second class, of the lowest bid for a street improvement and the execution of the formal contract with the lowest bidder, the city authorities rescind the ordinance under which the bids had been invited with a *bona fide* intention of carrying out the proposed improvement in a cheaper form than that originally contemplated, a writ of peremptory mandamus will not issue at the suit of the lowest bidder to compel the execution of a contract with him, particularly where the right to reject any and all bids was expressly reserved by the charter and by the advertisement for the bids. *People ex rel. Fisher v. Lennon* (1911), 147 App. Div. 640.

§ 124. Contracts for paving.

Application.—The supplemental charter of Schenectady (chapter 756 of the Laws of 1907) relating to paving streets in that city provides a complete system therefor, and the provisions of this section, prescribing certain requirements for the selection by the abutting property-owners of a particular make, style or brand of a kind of pavement or material above the cost of another make, style or brand of the same kind, are not applicable to Schenectady. *Union Paving Co. v. Board of Contract* (1911), 74 Misc. 646.

§ 42, 45, 93.

Rome custodial asylum.

L. 1912, ch. 448.

SEEDS.

Inspection and sale; Agricultural L., §§ 340–341.

SOLDIERS AND SAILORS.

Burial; Poor L., § 84.

Leave of absence in commemoration of Gettysburg; see Civil Service.

STATE CHARITIES LAW.

(L. 1909, ch. 57.)

§ 42. Powers and duties of fiscal supervisor.

Duty of fiscal supervisor to examine funds.—Whatever funds are established and maintained by the rules, and managed and controlled by the authorities of the institutions which report to the fiscal supervisor are not only subject to examination by him, but such examination is a part of his official duty. Rept. of Atty. Genl., Mch. 7, 1912.

§ 45. Quarterly estimates of expenses; contingent fund.

Approval of estimates.—The State Charities Law does not permit the purchase of goods under special fund estimates before estimates thereof are duly approved by the fiscal supervisor. Rept. of Atty. Genl. (1911), Vol. 2, p. 559.

§ 93. Superintendent, qualifications, powers and duties.

Operation upon inmates.—The superintendent of the Rome State Custodial Asylum is authorized to perform an operation for circumcision upon an inmate of the asylum, provided the operation is not inherently dangerous and clearly serve to allay or to effect a cure of the disease or disorder with which he is afflicted or materially to promote his health. Rept. of Atty. Genl. (1911), Vol. 2, p. 683.

§ 95. Rome custodial asylum; detention and discharge of inmates; procedure.—*Subdivisions 9 and 10, added by L. 1912, ch. 448, in effect Apr. 16, 1912, as follows:*

9. The superintendent may grant any inmate of said institution a parole or leave of absence under such rules and regulations as the board of managers of said asylum shall adopt to govern such procedure.

10. The superintendent may admit to the asylum temporarily, without commitment, under such rules and regulations as the board of managers may prescribe, for purposes of observation, such children or adults as are suspected of being feeble-minded or idiotic; to ascertain whether or not such person is actually mentally defective and a proper case for care, treatment and training in an institution for the feeble-minded or idiots.

Admission of feeble-minded children.—A feeble-minded child under the age of sixteen years, who is under such improper or insufficient guardianship as to endanger the morals, health or general welfare of said child, may be admitted to the Rome State Custodial Asylum, upon order of the County Court of Monroe County, if a vacancy in the asylum exists after providing for the custody of indigent feeble-minded persons and idiots, in the discretion of the Board of Managers, and

L. 1912, ch. 310.

Admissions to Oxford Home.

§§ 107, 205, 255.

under such regulations as to payment and otherwise as such board shall prescribe. Rept. of Atty. Genl., Jan. 4, 1912.

§ 107. Duties of the superintendent.

Operation upon inmates.—A patient in the Craig Colony may not be operated upon without his consent either express or implied. A consent, however, to the performance of even a major operation on an inmate may be implied where an emergency arises calling for immediate action for the preservation of the life or health of the patient and it is impracticable to obtain his express consent or the consent of any one authorized to speak for him. Rept. of Atty. Genl., Jan. 18, 1912.

§ 205. Return of females improperly admitted.

Expense of return of females.—The expenses necessarily paid by the Board of Managers of the New York Training School for Girls in causing the return of females committed to the school, who were incapable of being morally benefited by its discipline, are a proper charge against the county from which those females were committed, and should be paid by said county to the Board of Managers in the same manner as other county charges. Where the Board of Supervisors disallow the claim presented for such expenses, the proper procedure on the part of the Board of Managers is to apply for a writ of certiorari to review the determination of the Board of Supervisors, and the Board of Managers of the school may request the Attorney-General to furnish the legal assistance required in the matter. Rept. of Atty. Genl., Feb. 2, 1912.

§ 255. Admission to home.—Every honorably discharged soldier or sailor or marine who served in the army or navy of the United States, for a period not less than ninety days, during the war of the rebellion, and who shall have been a resident of this state for one year next preceding the application for admission, and the wife, widow and mother of any such honorably discharged soldier or sailor or marine, and army nurses who served in said army or navy and whose residence was at the time of the commencement of such service, or whose residence shall have been for one year next preceding his or her application for admission to said home within the state of New York, and who shall need the aid or benefit of said home in consequence of physical disability or other cause within the scope of the regulations of the board, shall be entitled to admission to said home after the approval of the application by the board of managers and subject to the conditions, limitations and penalties prescribed by the rules and regulations adopted by said board. Provided, however, said soldier or sailor or marine shall be a married man and shall be accompanied or attended by his wife during the time he may be an inmate of said home, and in case of the death of the wife, while an inmate of said home, the veteran may remain an inmate of said home with the consent of the superintendent, approved by the board of managers, but no wife or widow of a soldier or sailor or marine shall be admitted as an inmate of said home unless due and sufficient proof is presented of her marriage to such soldier or sailor or marine at least fifteen years prior to the date of such application. The board of managers shall require an applicant for admission to such home

to file with the application for admission his own affidavit of residence and in addition hereto the affidavit of at least two householders in and residents of the county of which he claims at the time of such application to be a resident; and such affidavits shall on presentation be accepted and received as sufficient proof, unless contradicted, of the residence of such applicant in any actions or proceedings against such county in which such residence of such applicant is material. If, after having been an inmate of such home, an honorably discharged soldier, sailor or marine, or the wife or widow of an honorably discharged soldier, sailor or marine, or an army nurse, shall reassume his or her former residence in any county, or shall acquire a new residence in any other county, and shall become entitled to relief as provided by article six of the poor law, the poor authorities within whose jurisdiction such honorably discharged soldier, sailor or marine, or the wife or widow of an honorably discharged soldier, sailor or marine, or an army nurse, resides, may, instead of providing relief as required by the poor law, return him or her to such home, to be maintained therein. (*Amended by L. 1909, ch. 240; renumbered by L. 1909, ch. 258; amended by L. 1910, ch. 133; renumbered by L. 1910, ch. 449; and amended by L. 1911, ch. 601 and L. 1912, ch. 310, in effect Apr. 13, 1912.*)

STATE FINANCE LAW.

(L. 1909, ch. 58.)

§ 4. Duties of comptroller.

Recovery of excessive fees for the registration of motor vehicles paid under protest. Fifth Ave. Coach Co. v. State of New York (1911), 73 Misc. 498, 131 N. Y. Supp. 62.

Construction of subdivision 8 in connection with section 744-a of the Code of Civil Procedure. Matter of Walsh (1912), 204 N. Y. 276, 278.

§ 37. **Payments to state treasurer.**—Every state officer, employee, board, department or commission receiving money for or on behalf of the state from fees, penalties, costs, fines, sales of property or otherwise, shall on the fifth day of each month pay to the state treasurer all such money received during the preceding month and on the same day file a detailed, verified statement of such receipts with the comptroller, who shall keep an account thereof in his office. This section shall not apply to the manufacturing fund of the state prisons known as the capital fund, nor to the receipts of the manufacturing departments of the state hospitals for the insane, nor to the convict deposit and miscellaneous earning fund of the state prisons. This section shall be deemed to supersede any other provision of this chapter or of any other general or special law inconsistent therewith. (*Amended by L. 1910, ch. 440 and L. 1912, ch. 162, in effect Apr. 5, 1912.*)

Application.—License fees collected from immigrant lodging-places, pursuant to § 156-a of the Labor Law, should only be paid out after an appropriation definite in amount. Rept. of Atty. Genl., Jan. 3, 1912.

L. 1912, ch. 514.

Specifications for contract work.

§ 50.

§ 50. **Separate specifications for contract work for the state.**—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alteration of buildings for the state, when the entire cost of such work shall exceed one thousand dollars, must have prepared separate specifications for each of the following branches of work to be performed:

1. Plumbing and gas fitting.
2. Steam heating, hot water and ventilating apparatus.

Such specifications must be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state, or a department, board, commission, commissioner or officer thereof, for the erection, construction or alteration of buildings or any part thereof, shall award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations. Nothing in this section shall be construed to prevent the authorities in charge of any state building from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof. (*Added by L. 1912, ch. 514, in effect Sept. 1, 1912.*)

STATE FIRE MARSHAL.

See Insurance L., §§ 350-375.

STATE LAW.

(L. 1909, ch. 59.)

§ 2. **Connecticut boundary line.**—The boundary line between the states of New York and Connecticut is as follows:

Commencing at a granite monument (No. 1), at the northwest corner of the state of Connecticut, marking the corner of Massachusetts, New York and Connecticut, in latitude $42^{\circ} 02' 58''$.427 and longitude $73^{\circ} 29' 15''$.959; thence south $2^{\circ} 42' 30''$ west 30,569 feet to a granite monument (No. 12) 470 feet south of the Bird Hill road between Millerton and Ore Hill in latitude $41^{\circ} 57' 56''$.772 and longitude $73^{\circ} 29' 35''$.078; thence south $3^{\circ} 53' 44''$ west 15,846 feet to a monument (No. 18) in the south side of the highway from Millerton to Sharon along the north shore of Indian pond in latitude $41^{\circ} 55' 20''$.586 and longitude $73^{\circ} 29' 49''$.316; thence south $2^{\circ} 47' 51''$ west 10,681 feet to a monument (No. 21) on the cliff north of Webatuck creek in latitude $41^{\circ} 53' 35''$.190 and longitude $73^{\circ} 29' 56''$.210; thence south $4^{\circ} 39' 01''$ west 10,683 feet to a monument (No. 24) in the rear of R. E. Randall's house on the east road from Sharon Valley to Leedsville in latitude $41^{\circ} 51' 49''$.995 and longitude $73^{\circ} 30' 07''$.652; thence south $3^{\circ} 49' 10''$ west 26,405 feet to a monument (No. 32) on the westerly slope of a rocky hillside at the corner of the towns of Sharon and Kent in latitude $41^{\circ} 47' 29''$.709 and longitude $73^{\circ} 30' 30''$.871; thence south $3^{\circ} 52' 35''$ west 10,457 feet to a monument (No. 35) on the shoulder of a mountain northeast of Bog Hollow, in latitude $41^{\circ} 45' 46''$.637 and longitude $73^{\circ} 30' 40''$.199; thence south $3^{\circ} 06' 18''$ west 16,045 feet to a monument (No. 41) at the easterly edge of a large pasture north of Preston mountain, known as the Chapel lots, in latitude $41^{\circ} 43' 08''$.354 and longitude $73^{\circ} 30' 51''$.658; thence south $3^{\circ} 57' 03''$ west 10,657 feet to a monument (No. 45) at the southerly end of Schaghticoke mountain in latitude $41^{\circ} 41' 23''$.320 and longitude $73^{\circ} 31' 01''$.535; thence south $2^{\circ} 41' 41''$ west 10,534 feet to a monument (No. 48) on the northwesterly slope of Ten-Mile hill in latitude $41^{\circ} 39' 39''$.359 and longitude $73^{\circ} 31' 07''$.860; thence south $3^{\circ} 31' 35''$ west 21,140 feet to a monument (No. 55) at the northerly end of a rocky hill about a mile south of the northeast corner of the town of Pawling, New York, in latitude $41^{\circ} 36' 10''$.894 and longitude $73^{\circ} 31' 24''$.972; thence south $4^{\circ} 24' 52''$ west 10,785 feet to a monument (No. 59) in a field east of a right angle in the road from Quaker Hill to Sherman in latitude $41^{\circ} 34' 24''$.659 and longitude $73^{\circ} 31' 35''$.893; thence south $3^{\circ} 52' 52''$ west 10,520 feet to a monument (No. 64) on a ledge falling southwest to a brook in the southwestern part of the town of Sherman in latitude $41^{\circ} 32' 40''$.963 and longitude $73^{\circ} 31' 45''$.257; thence south $4^{\circ} 28' 48''$ west 10,410 feet to a monument (No. 68) on Cranberry mountain in latitude $41^{\circ} 30' 58''$.424 and longitude $73^{\circ} 31' 55''$.946; thence south $2^{\circ} 24' 38''$ west 10,617 feet to a monument (No. 72)

on the northerly slope of a hill a mile south of Haviland Hollow in latitude $41^{\circ} 29' 13''$.627 and longitude $73^{\circ} 32' 01''$.813; thence south $3^{\circ} 03' 12''$ west 20,731 feet to a monument (No. 80) in a mowed field southeast of an angle in the road from Brewster to Ball Pond in latitude $41^{\circ} 25' 49''$.108 and longitude $73^{\circ} 32' 16''$.309; thence south $4^{\circ} 53' 12''$ west 10,279 feet to a monument (No. 84) on the northerly side of a rocky summit northwest of Mill Plain in latitude $41^{\circ} 24' 07''$.915 and longitude $73^{\circ} 32' 27''$.798; thence south $2^{\circ} 45' 48''$ west 10,527 feet to a monument (No. 89) in a swampy pasture south of a right angle in a back road which runs along the line between the towns of Danbury and Ridgefield in latitude $40^{\circ} 22' 24''$.030 and longitude $73^{\circ} 32' 34''$.456; thence south $4^{\circ} 36' 39''$ west 10,878 feet to a monument (No. 91) in a swamp near Mopus brook in latitude $41^{\circ} 20' 36''$.900 and longitude $73^{\circ} 32' 45''$.920; thence south $4^{\circ} 12' 16''$ west 10,493 feet to a monument (No. 96) south of a ledge on Titicus mountain in latitude $41^{\circ} 18' 53''$.507 and longitude $73^{\circ} 32' 56''$.001; thence south $6^{\circ} 32' 21''$ west 7,214 feet to a monument (No. 98) known as the Ridgefield angle on a steep side hill sloping toward South Pond in latitude $41^{\circ} 17' 42''$.690 and longitude $73^{\circ} 33' 06''$.764; thence south $32^{\circ} 46' 06''$ east 14,109 feet to a monument (No. 103) in a swamp near a small brook in latitude $41^{\circ} 15' 45''$.460 and longitude $73^{\circ} 31' 26''$.775; thence south $32^{\circ} 41' 46''$ east 10,443 feet to a monument (No. 106) at the westerly side of a rocky ridge near the southwest corner of Ridgefield in latitude $41^{\circ} 14' 18''$.626 and longitude $73^{\circ} 30' 12''$.940; thence south $32^{\circ} 02' 28''$ east 11,047 feet to a monument (No. 109) known as the Wilton angle in woodland northwest of Bald Hill in latitude $41^{\circ} 12' 46''$.101 and longitude $73^{\circ} 28' 56''$.263; thence south $59^{\circ} 59' 58''$ west 9,588 feet to a monument (No. 112) on the south side of a short cross road leading west from the Vista road in latitude $41^{\circ} 11' 58''$.721 and longitude $73^{\circ} 30' 44''$.877; thence south $57^{\circ} 58' 49''$ west 6,002 feet to a monument (No. 115) on the northeasterly slope of a low, wooded hill one-half mile west of Mud Pond and northeast of Sellick's Corners in latitude $41^{\circ} 11' 27''$.272 and longitude $73^{\circ} 31' 51''$.438; thence south $59^{\circ} 09' 58''$ west 15,983 feet to a monument (No. 120) on the summit of a rocky ridge half way between two large swamps, northeast of Long Ridge in latitude $41^{\circ} 10' 06''$.294 and longitude $73^{\circ} 34' 50''$.871; thence south $58^{\circ} 56' 22''$ west 21,193 feet to a monument (No. 127) in level woodland west of a low hill west of Banksville in latitude $41^{\circ} 08' 18''$.189 and longitude $73^{\circ} 38' 48''$.129; thence south $58^{\circ} 32' 47''$ west 26,355 feet to a rough granite monument (No. 140) known as the Duke's Trees angle, set in concrete with its top below the roadway called King street in latitude $41^{\circ} 06' 02''$.205 and longitude $73^{\circ} 43' 41''$.778; thence south $31^{\circ} 29' 41''$ east 11,440 feet to a monument (No. 148) 300 feet north of the road leading west from King street south of Rye lake in latitude $41^{\circ} 04' 25''$.814 and longitude $73^{\circ} 42' 23''$.747; thence south $32^{\circ} 10' 57''$ east 14,975 feet to a monument (No. 153) at the east side of King street 1,000 feet north of Ridge street in latitude $41^{\circ} 02' 20''$.570 and

longitude 73° 40' 39" .666; thence south 32° 07' 30" east 11,461 feet to a granite monument (No. 158) set at the north side of Byram bridge in a concrete pier on a granite ledge known since 1684 as the Great Stone at the wading place in latitude 41° 00' 44" .662 and longitude 73° 39' 20" .172; thence south 9° 53' 43" west 835 feet to a brass bolt and plate (No. 159) set in the top of a large boulder in Byram river in latitude 41° 00' 36" .535 and longitude 73° 39' 22" .044; thence south 18° 56' 41" west 3,735 feet to angle No. 161 in Byram river in latitude 41° 00' 1" .626 and longitude 73° 39' 37" .863, this tangent being produced and referenced on the shore by a brass bolt and plate leaded into the rock on a steep hill; thence south 12° 57' 02" east 965 feet to angle No. 162 in Byram river in latitude 40° 59' 52" .335 and longitude 73° 39' 35" .044, the line being produced and referenced by a bolt and plate in the rock on a hill east of the river; thence south 5° 14' 08" west 950 feet to angle No. 163 in Byram river in latitude 40° 59' 42" .995 and longitude 73° 39' 36" .173; the line being produced and referenced by a bolt and plate in the ledge on the west shore of the river; thence south 9° 10' 19" east 692 feet to angle No. 164 in Byram river in latitude 40° 59' 36" .249 and longitude 73° 39' 34" .736, the line being produced and referenced by a bolt and plate in the shore; thence south 34° 35' 04" east 684 feet to angle No. 165 in Byram river in latitude 40° 59' 30" .682 and longitude 73° 39' 29" .671, both ends of this and the three subsequent tangents being produced and referenced by brass bolts and plates set in the ledge on the shore of the river; thence south 26° 00' 02" east 229 feet to angle No. 166 in latitude 40° 59' 28" .646 and longitude 73° 39' 28" .360; thence south 5° 26' 38" west 402 feet to angle No. 167 in latitude 40° 59' 24" .694 and longitude 73° 39' 28" .857; thence south 50° 49' 51" west 815 feet to angle No. 168 in latitude 40° 59' 19" .608 and longitude 73° 39' 37" .096; thence south 30° 01' 41" east 1,924 feet to angle No. 169, a point in the center of the channel in line with the breakwater at Lyon's or Byram point in latitude 40° 59' 03" .152 and longitude 73° 39' 24" .546 the northerly end of this tangent being produced back and referenced by a brass bolt and plate in the ledge overlooking the harbor; thence south 45° east 17,160 feet or three and one-quarter miles to angle No. 170 in latitude 40° 57' 03" .228 and longitude 73° 36' 46" .418, the first angle point in Long Island sound described by the joint commissioners of New York and Connecticut by a memorandum of agreement dated December eighth, eighteen hundred and seventy-nine; thence in a straight line (the arc of a great circle) north 74° 32' 32" east 434,394 feet to a point (No. 171) in latitude 41° 15' 31" .321 and longitude 72° 05' 24" .685, four statute miles true south of New London lighthouse; thence north 58° 58' 43" east 22,604 feet to a point (No. 172) in latitude 41° 17' 26" .341 and longitude 72° 01' 10" .937, marked on the United States coast survey chart of Fisher's Island sound annexed to said memorandum, which point is on the long east $\frac{3}{4}$ north sailing course drawn on said map 1,000 feet true north from the Hammock or North Dumpling lighthouse; thence following

L. 1912, ch. 352.

Connecticut boundary line.

§ 2.

said east $\frac{3}{4}$ north sailing course north $73^{\circ} 37' 42''$ east 25,717 feet to a point (No. 173) in latitude $41^{\circ} 18' 37''$.835 and longitude $71^{\circ} 55' 47''$.626, marked No. 2 on said map; thence south $70^{\circ} 07' 26''$ east 6,424 feet toward a point marked No. 3 on said map until said line intersects the westerly boundary of Rhode Island at a point (No. 174) in latitude $41^{\circ} 18' 16''$.249 and longitude $71^{\circ} 54' 28''$.477 as determined by the joint commissioners of Connecticut and Rhode Island by a memorandum of agreement dated March twenty-fifth, eighteen hundred and eighty-seven.

The geodetic positions given in this description are based on Clark's spheroid of eighteen hundred and sixty-six and the astronomical data adopted by the United States coast and geodetic survey in eighteen hundred and eighty and are computed from data given in appendix number eight to the report of the said survey for eighteen hundred and eighty-eight, entitled "Geographical Positions in the State of Connecticut."

The boundary line hereinbefore described and determined which has been located and defined as, and in the manner, provided by section eight of this chapter is fully and accurately laid down on duplicate maps, one copy of which has been deposited with the secretary of state of the state of New York and the other copy thereof with the secretary of state of the state of Connecticut.

Nothing herein contained shall be construed to affect any existing titles to property, corporeal or incorporeal, held under grants heretofore made by either of said states, nor to affect existing rights which said states or either of them or which the citizens of either of said states may have by grant, letters-patent or prescription of fishing in the waters of said sound, whether for shell or floating fish irrespective of the boundary line hereby established, it not being the purpose hereof to define, limit or interfere with any such right, rights or privileges whatever the same may be.

The governor is authorized and requested to transmit a copy of this act to the governor of the state of Connecticut, and upon receiving acknowledgment of its receipt by the state of Connecticut the governor of this state shall cause such acknowledgment to be filed in the office of the secretary of state.

The governor of this state is authorized in concurrence with the governor of the state of Connecticut to communicate to Congress the action of the two states on this subject and to request the approval of congress of the boundaries thus established and monumented. (*Amended by L. 1912, ch. 352, in effect Apr. 15, 1912.*)

STATE REFORMATORY.

L. 1912, ch. 502.—An act to establish a state reformatory for misdemeanants. (*In effect Apr. 18, 1912.*)

§ 1. **Establishment and purposes.**—A state reformatory for misdemeanants is hereby established for the reformation and the educational, industrial and moral instruction and training of males under conviction and sentence for commission of misdemeanors or other minor offenses.

§ 2. **Board of managers.**—The general management and control of the said state reformatory for misdemeanants shall be in charge of a board of managers appointed pursuant to the provisions of the state charities law.

§ 3. **Selection of site and construction.**—The said board shall proceed forthwith to select a site for the said reformatory and, upon the approval of the governor, to purchase such site. In the selection of the site, due consideration shall be given to healthfulness of location, fertility of soil, water supply, drainage and accessibility. It shall be the duty of the said board to prepare the grounds so purchased for use as a site for the said reformatory, to provide a water supply and system of drainage therefor, to determine what buildings are necessary to be erected thereon for the proper housing and educational and industrial training of not less than five hundred inmates, and to act as a board of managers in the erection of the said buildings and in the expenditure of the moneys herein or hereafter appropriated for the purchase and improvement of the said site. In all the work of construction and improvement, the labor of convicts shall be employed wherever and so far as practicable. Each of the said managers shall receive his necessary expenses incurred in connection with his work for the said reformatory.

§ 4. **Commitment; term of detention.**—As soon as the said buildings and improvements shall be completely finished or so far finished as to be ready for use as a reformatory and ready for the reception of inmates, the said managers shall officially notify the several county clerks of all the counties of the state of that fact. It shall be the duty of the said county clerks immediately on receipt of the said official notification to transmit a copy thereof to each and all of the several courts in their respective counties and to each and all of the several justices of the supreme court and other judges, justices and magistrates, residing or sitting in their respective counties. Thereafter any male between the ages of sixteen and twenty-one years inclusive, convicted by any court or magistrate of a misdemeanor, or other minor offense for which he might be sentenced to imprisonment, may be sentenced and committed to the said institution, to be there confined, as herein provided. Such commitments shall not be for a definite term, but any such male at any time after his commitment may be paroled

L. 1912, ch. 502.

For misdemeanants established.

§ 5.

or discharged by the said board of managers, but shall not in any case be detained longer than three years. If through oversight or otherwise any male be sentenced to imprisonment in the said institution for a definite period of time, such sentence shall not for that reason be void, but the person so sentenced shall be entitled to the benefits and subject to the liabilities of this act, in the same manner and to the same extent as if such sentence had been for an indefinite period of time, in the manner herein provided for. Commitments to the said institution shall be as herein provided, anything in the penal law to the contrary notwithstanding. In rendering such sentence, preference may be given to minors, over adults, in view of the limited room in said reformatory of the reception of inmates.

§ 5. **Appropriation.**—The sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, is hereby appropriated for the purposes of this act. Out of this sum shall be paid, by the comptroller on the audit of the said board of managers, the expenses of the said board as hereinbefore provided for as well as the purchase price of the site for the said reformatory. Any balance remaining of the said appropriation shall be paid by the comptroller to the said board of managers on their requisition, and shall be by them applied toward the preparation and improvement of said site as hereinbefore directed, toward the procuring of the necessary plans and specifications for the buildings to be erected on the said site, and toward the erection of the said buildings, so far as the said appropriation shall be sufficient for such purposes.

STENOGRAPHERS.

See Judiciary L., §§ 303, 307.

STOCK CORPORATION LAW.

(L. 1909, ch. 61.)

§ 6. Power to borrow money and mortgage property.

Purchase money mortgage, the provisions of this section do not apply to. *Clement v. Congress Hall* (1911), 72 Misc. 519, 132 N. Y. Supp. 16.

Invalid mortgage.—Where a person organizes a laundry corporation, and transfers his own business to that corporation, subject to a chattel mortgage held by his wife, but when upon the renewal of the mortgage no consent of two-thirds of the stockholders is obtained, such renewed mortgage is invalid. *In re Eagle Steam Laundry Co.*, 176 Fed. 740 (1910).

§ 8. Power to guarantee bonds of other corporations.

Contract of guaranty; presumption of regularity.—A contract written on bonds issued by another corporation, which contract indorsed the bonds and guaranteed to the holder payment in full, to secure a collateral mortgage on its own property, is a contract of guaranty, and not of indorsement, and is within the powers of the corporation. In the absence of evidence to the contrary it will be presumed that the guaranty was authorized by vote of the stockholders as required. *Gay v. Hudson River Electric Power Co.*, 190 Fed. 773 (1911).

§ 9. Reorganization upon sale of corporate property and franchises.

Application of sections 9–12. *People ex rel. Third Ave. Ry. Co. v. Public Service Commission* (1911), 145 App. Div. 318, *affd.* 203 N. Y. 299. The enactment of the Public Service Commissions Law did not repeal sections 9 and 12 of the Stock Corporation Law and is not in conflict therewith. The two statutes must be construed together. *People ex rel. Third Avenue Ry. Co. v. Public Service Commissions* (1911), 203 N. Y. 299.

§ 15. Merger.

Application.—A certificate providing for the merger of a corporation, organized under the Railroad Law, with an electric light and railroad company, organized under the Transportation Corporations Law, should not be filed by the Secretary of State. *Rept. of Atty. Genl.*, Jan. 24, 1912.

§ 19. Issuance of shares of stock without nominal or par value.—Upon the formation or the reorganization of any stock corporation, other than a moneyed corporation, and other than a corporation under the jurisdiction of any public service commission, the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value by stating in such certificate:

(1) The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock or any part thereof shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.

(2) The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than five hundred dollars.

Such statements in the certificate shall be in lieu of any statements prescribed by the law under which the corporation shall have been formed or reorganized as to the amount or the maximum amount of its capital stock or the number of shares into which the same shall be divided, or of the amount or the par value of such shares.

Each share of such stock without nominal or par value shall be equal to every other share of such stock, subject to the preferences given to the preferred stock if any authorized to be issued. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates for preferred shares having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

Such corporation may issue and may sell its authorized shares, from time to time, for such consideration as may be prescribed in the certificate of incorporation, or as from time to time may be fixed by the board of directors pursuant to authority conferred in such certificate, or if such certificate shall not so provide, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof. (*Added by L. 1912, ch. 351, in effect Apr. 15, 1912.*)

§ 20. Commencement of business; authorized debts.—No corporation formed pursuant to section nineteen hereof shall begin to carry on business or shall incur any debts until the amount of capital stated in its certificate of incorporation shall have been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in its certificate of incorporation shall be increased as herein provided, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property the amount of such increase of its stated

capital. The directors of the corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt; but no action shall be brought under the foregoing provision of this section unless within one year after the debt shall have been incurred the creditors shall have served upon the director written notice of intention to hold him personally liable for such debt. Any director who, because of any such liability under this section, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporation and its property and also shall be entitled to contribution from all other directors of the corporation similarly liable for the same debt and the personal representative of any such director who shall have died before making such contribution.

No such corporation shall declare any dividend which shall reduce the amount of its capital below the amount stated in the certificate as the amount of capital with which the corporation will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend. (*Added by L. 1912, ch. 351, in effect Apr. 15, 1912.*)

§ 21. **Taxation.**—The organization tax payable under section one hundred and eighty of the tax law by any corporation issuing such shares without designated monetary value shall be at the rate of five cents on each such share which the corporation is authorized to issue, and a like tax upon any subsequent increase thereof. The tax payable under section two hundred and seventy of the tax law in respect of any sale or agreement of sale or any memorandum of sale or delivery or transfers of shares or certificates of any share without designated monetary value hereafter issued by any such corporation issuing such shares shall be at the rate of two cents for each and every share of such stock so transferred. The franchise tax upon any corporation issuing such shares of stock payable under section one hundred and eighty-two of the tax law shall be determined by the amount of the gross assets of such corporation employed in any business within this state, less such proportion of its liabilities as shall represent the ratio of its gross assets employed in any business within this state to its entire gross assets wherever employed in business, and the rate of such franchise tax shall be fixed in the manner provided in said section one hundred and eighty-two of the tax law. For this purpose the rate of dividends shall be computed by dividing the total amount of dividends which have been paid during the year by the amount of assets of the corporation upon the first day of such year. (*Added by L. 1912, ch. 351, in effect Apr. 15, 1912.*)

§ 22. **Increase or reduction of shares or capital.**—Any corporation formed or reorganized pursuant to section nineteen may amend its certificate of incorporation so as to increase or to reduce the number of shares which it may issue, or so as to increase or to reduce the amount of its stated capital, by filing, in the manner provided for the original certificate of incorporation, a certificate of amendment under seal executed by its president or a vice-president and by its secretary or its treasurer, stating the amendment proposed and that the same has been duly authorized by a vote of a majority of the directors and also by the vote of the holders of at least three-fifths of the outstanding shares of each class issued by the corporation, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three hereof, and by filing with such certificate of amendment a copy of the proceedings of such meeting, made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation; but an amendment cannot be made under this section unless as so amended the certificate of incorporation could lawfully have been filed under section nineteen of this chapter. In case of a reduction of the amount of capital of a corporation, a certificate setting forth the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation and shall be filed with the certificate of amendment; and such certificate of amendment shall have endorsed thereon the approval of the comptroller to the effect that as so stated the reduced amount of capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities. (*Added by L. 1912, ch. 351, in effect Apr. 15, 1912.*)

§ 23. **Amount of capital stock and of shares within meaning of other laws.**—For the purpose of any rule of law or of any statutory provision (other than the foregoing sections nineteen, twenty, twenty-one and twenty-two) relating to the amount of the capital stock of a corporation or the amount or par value of its shares, the aggregate amount of the capital stock of any such corporation formed pursuant to section nineteen hereof shall be deemed to be the aggregate amount specified in the certificate or amended certificate of incorporation or of reorganization as the amount of capital with which the corporation will carry on business; the amount or the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate or such amended certificate; and the amount or the par value of each other share shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate or in such amended certificate in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal. (*Added of the laws of nineteen hundred and eleven.*)

§ 25. Directors.

Directors must be stockholders.—Where the by-laws of a corporation require a director to be “the holder or owner of at least one share” of its stock and it appears that stock has been transferred prior to an election for the sole purpose of qualifying the transferees as directors, but that these shares had been immediately assigned back to the true owner in blank, their election to the office of director is invalid. *Matter of Ringler & Co.* (1912), 204 N. Y. 30.

The provision of the statute that directors must be stockholders is satisfied if they are stockholders of record, although they have indorsed the certificates issued to them and delivered the same to the beneficial owner. *Matter of Ringler & Co.* (1911), 145 App. Div. 361, 130 N. Y. Supp. 62.

§ 28. Liability of directors for making unauthorized dividends.

Violation of section.—Where the corporate stock of a corporation was issued in consideration of the assignment to the corporation of patent rights, a contract by the company to assign to a stockholder certain of such patent rights in a stipulated territory in return for which the stockholder agrees to turn over his stock to the corporation and resign as an officer of the company is in violation of this section. *Stevens v. Olus Mfg. Co.* (1911), 72 Misc. 508, 130 N. Y. Supp. 22.

§ 30. Officers.

Agreement of officers to resign.—Where a person agreed in consideration of a transfer to himself of over eighty per cent. of its stock to advance to a West Virginia mining company sufficient money to redeem its property from a foreclosure sale and to furnish other money as required from time to time to operate its mines until they should yield sufficient return to pay for working them, a provision in the contract that after the redemption of the property the secretary and treasurer of the company would resign and the directors would appoint the individuals nominated by such person to the vacant positions and that a stockholders' meeting would then be called and a new board of directors elected is not a vital part of the contract and does not destroy its validity so as to constitute a defense to an action by the company to recover damages for its breach. *San Remo Copper Mining Co. v. Moneuse* (1912), 149 App. Div. 26.

§ 32. Books to be kept.

Application.—Sections 32 and 33 have reference to the management and control of corporations and have no reference to the Stock Transfer Tax Law. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 674.

An examination of the books and papers of a corporation will not be allowed for an ulterior purpose or to embarrass the corporation. *People ex rel. Lehman v. Consolidated Fire Alarm Co.* (1911), 145 App. Div. 427, 129 N. Y. Supp. 1053.

Where, on an application by a stockholder for a writ of mandamus to compel his corporation to permit him to inspect the stock book, it appears that his purpose in seeking the inspection is “sinister and inimical” to the corporation, his application in the exercise of judicial discretion should be denied. *Idem.*

A stockholder has an absolute legal right to inspect the stock book of his corporation; and, *it seems*, that his motive for so doing, however sinister, is no answer to an action by him to recover the statutory penalty for the refusal of the corporation to permit an inspection. *People ex rel. Britton v. Am. Press Assn.* (1912), 148 App. Div. 651.

Mandamus will not issue to compel a corporation to permit a stockholder to inspect its books and papers if the purpose of such examination is to furnish information to the president of a competing company, and so to embarrass the

respondent. *People ex rel. Lehman v. Consolidated Fire Alarm Co.* (1911), 145 App. Div. 427, 129 N. Y. Supp. 1053.

§ 33. Stock books of foreign corporation.

Constitutionality.—This section is not unconstitutional on the theory that it is in restraint of interstate commerce. *Hovey v. De Long Hook & Eye Co.* (1911), 147 App. Div. 881.

Application.—The provisions, requiring foreign stock corporations, other than moneyed and railroad corporations, having an office for the transaction of business in this state, to keep a stock book containing the names of stockholders and imposing a penalty for a refusal to allow an inspection of said book by stockholders and judgment-creditors, has no relation to the provisions of the statutes requiring foreign corporations doing business in this state to obtain a certificate permitting them to do so and to pay a tax. Hence, a foreign corporation having an office for the transaction of business in this state which refuses to allow an inspection of said stock book by a stockholder is liable for the penalty although it has not been licensed to do business here. *Hovey v. De Long Hook & Eye Co.* (1911), 147 App. Div. 881.

§ 51. Transfers of stock by stockholder indebted to the corporation.

Application.—This section is applicable to a domestic banking corporation and where a debtor has assigned his stock the bank may refuse to transfer the same to the name of the assignee until the assignor's debt is paid. Although this section only empowers a corporation to refuse to recognize an assignment of stock until the assignor's indebtedness is paid where a copy of the section is printed upon the certificate of stock, it is sufficient if the certificate contain a copy of a by-law of the corporation making a similar provision. *Strahmann v. Yorkville Bank* (1911), 148 App. Div. 8.

§ 54. Time of payment of subscriptions of stock.

Enforcement of liability of stockholders in foreign corporations.—The liability of stockholders in foreign corporations to creditors of the corporations is not contractual but statutory and cannot be enforced except at the domicile of the corporation where the obligation was created. *Coulter Dry Goods Co. v. Rosenbaum* (1911), 74 Misc. 579.

§ 56. Liabilities of stockholders.

Forfeiture; notice to stockholders.—Where a forfeiture of stock is declared pursuant to this section, it is necessary for the board of directors itself to determine whether the notice requiring the stockholders to make payment within a certain time shall be given and when, in order to make the forfeiture valid. *Matter of N. Y. & Westchester Town Site Co.* (1911), 145 App. Div. 623, 130 N. Y. Supp. 414.

Action by creditor on behalf of all creditors to enforce liability of stockholders; parties defendant.—A creditor of a corporation suing in equity on behalf of all creditors of the corporation to enforce the liability of stockholders for unpaid subscriptions to the capital stock must join as defendants all stockholders who are liable under the statute as well as the personal representatives of those who have died, so that they may be compelled to contribute *pro rata* and all creditors may share in the fund recovered. It seems, that if such plaintiff comes into court believing that he has made all stockholders who are liable parties defendant he may, on discovering a defect of parties, obtain leave to bring them in by a supplemental summons and complaint. It would not be essential to make the owner of stock not fully paid a defendant if he be insolvent, bankrupt or without the

§§ 57, 59, 61, 66.

Limitation of stockholder's liability.

jurisdiction. *Warth v. Moore Blind Stitcher & Overseamer Co.* (1911), 146 App. Div. 28, 130 N. Y. Supp. 748.

§ 57. Liabilities of stockholders to laborers, servants or employees.

Liability of stockholders for costs.—A stockholder cannot be charged with costs incurred in the defense of an action prosecuted against the corporation for damages upon causes of action other than that embraced in the statute making him liable. *Card & Groesbeck* (1912), 204 N. Y. 301.

§ 59. Limitation of stockholder's liability.

Application.—The provision of the statute (§ 59) prohibiting the bringing of an action against a stockholder for a debt of the corporation until judgment therefor has been recovered against the corporation and an execution thereon has been returned unsatisfied, in whole or in part, requires a verdict determining the amount of the plaintiff's claim, and the stockholder, when he is called upon to pay, cannot be required to ascertain the amount from estimates and figures made by another as to the various items included by the jury in its verdict. *Card v. Groesbeck* (1912), 204 N. Y. 301.

The corporation itself is given no claim or right of action against stockholders for the amount unpaid on stock held by them. Certain stockholders, viz., those who were actually stockholders when a debt of the corporation was contracted, are made personally responsible to certain creditors, viz., those who are creditors on debts payable within two years after they were contracted, to an amount unpaid on their stock. Hence no right of action passes to a trustee in bankruptcy of the corporation in behalf of its general creditors. *In re Jassoy Co.*, 178 Fed. 515 (1910).

Individual liability of stockholders in a corporation organized under chapter 32 of the Laws of 1851. *Leighton v. Leighton Lea Assn.* (1911), 146 App. Div. 255, 130 N. Y. Supp. 935.

See generally *Cheney v. Scharmann* (1911), 145 App. Div. 456, 129 N. Y. Supp. 993.

§ 61. Preferred and common stock.

Changing the status of preferred stockholders.—A corporation cannot, without the unanimous consent of its common stockholders, increase the rights of the preferred stockholders. *Rept. of Atty. Genl.*, Mch. 26, 1912.

§ 66. Prohibited transfers to officers or stockholders.

Validity of mortgage.—A mortgage given by a corporation to secure its guaranty of the bonds of another corporation previously issued is not void, where such mortgage was given pursuant to an antecedent agreement made in good faith and for a valuable consideration at the time of the guaranty and when the guarantor was not insolvent nor its insolvency imminent, although it was insolvent when the mortgage was executed and may have intended to give the mortgage preference over other creditors. *Gay v. Hudson River Electric Power Co.*, 190 Fed. 773 (1911).

Void assignment.—An assignment by a corporation of certain mortgages and liquor tax certificates to director creditors four months before filing a petition in bankruptcy, but when such corporation was in reality insolvent, is void. *In re Salvator Brewing Co.*, 183 Fed. 910 (1910).

SUPERVISORS.

Vacancy in office of chairman; County L., § 10. General powers; County L., § 12. Compensation; County L., § 23. General duties; Town L., § 98.

SUPREME COURT.

L. 1911, ch. 855, § 1 (B. C. & G.'s Consol. L. Vol. 8, p. 790) amended by L. 1912, ch. 486, in effect Apr. 18, 1912, as follows:

§ 1. The appellate division of the supreme court in the first department is hereby authorized in its discretion to retire any clerk, assistant clerk, stenographer, librarian or attendant who shall have served as such in the supreme court in and for the first judicial district or in any court which has been consolidated with the said supreme court, or who has had charge of the records of any such court in the office of the clerk of the county of New York, and who shall have become physically or mentally incapacitated for the further performance of the duties of his position, provided such person was employed continuously for a period of fifteen years or more in one or more of such positions and for ten years or more prior to such service was employed continuously either in one or more of such positions or in any department or office of the state or of the county or city of New York. Any person or persons retired from service pursuant to this act shall be paid out of the funds apportioned to the supreme court of the first department an annual sum for annuity to be determined by said appellate division but not exceeding one-half of the average amount of his annual salary or compensation for a period of two years preceding the time of such retirement. Such annuity shall be paid in equal monthly instalments during the lifetime of the person or persons so retired.

SURROGATES.

Compensation in certain counties; County L., § 232.

TAXES.

L. 1912, ch. 20.—An act to legalize the official acts of boards of supervisors in the year nineteen hundred and eleven, in equalizing the assessed valuations of real estate between the several tax districts in the county and also to legalize the levying and collection of taxes in said tax districts in accordance with such equalization. (*In effect* Mch. 6, 1912.)

Section 1. All the official acts of the board of supervisors of any county in the year nineteen hundred and eleven in equalizing the assessed valuations of real estate between the several tax districts in the county, and the levying and collection thereafter of taxes in such tax districts in accordance with such equalization, are hereby legalized, ratified and confirmed and declared to be valid and legal, and all such taxes collected or uncollected shall have full force, effect and validity, notwithstanding that such equalization by the board of supervisors did not comply with the provisions of section fifty of the tax law, as amended by chapter eight hundred and one of the laws of nineteen hundred and eleven.

| § 1. | Rate of direct tax. | L. 1912, chs. 64, 209. |
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§ 2. Nothing in this act shall affect any action or proceeding now pending in any court.

L. 1912, ch. 64.—An act to legalize and confirm the tax levied for the repair of highways upon the assessment rolls of the several towns for the year nineteen hundred and eleven. (*In effect Mch. 23, 1912.*)

Section 1. The taxes levied in the year nineteen hundred and eleven for the repair of highways upon the real and personal property in the several towns are hereby legalized and confirmed so as to be of the same force and effect as though the boards of supervisors had in said year levied the minimum amount required to be levied and collected under the provisions of subdivision one, section ninety, chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws."

L. 1912, ch. 209.—An act to provide ways and means for the support of government. (*In effect Apr. 8, 1912.*)

§ 1. Direct tax.—There shall be imposed, for the fiscal year beginning on the first day of October, nineteen hundred and twelve, on each dollar of real and personal property of this state subject to taxation, taxes for the purposes hereinafter mentioned, which taxes shall be assessed, levied and collected by the annual assessment and collection of taxes of that year in the manner prescribed by law, and shall be paid by the several county treasurers into the treasury of this state, to be held by the treasurer, to be applied to the purposes specified, that is to say:

For the general fund, and for the payment of those claims and demands which shall constitute a lawful charge upon that fund during the fiscal year commencing October first, nineteen hundred and twelve, three hundred and ninety-six one-thousandths of a mill.

For the annual contribution to the canal debt sinking fund, pursuant to the provisions of chapter one hundred and forty-seven of the laws of nineteen hundred and three, twenty-four one-thousandths of a mill.

For the annual contribution to the canal debt sinking fund pursuant to chapter one hundred and forty-seven of the laws of nineteen hundred and three and chapter three hundred and two of the laws of nineteen hundred and six, as amended by chapter two hundred and forty-one of the laws of nineteen hundred and nine, eighty-four one-thousandths of a mill.

For the annual contribution to the canal debt sinking fund, pursuant to chapter one hundred and forty-seven of the laws of nineteen hundred and three, chapter three hundred and two of the laws of nineteen hundred and six, as amended by chapter two hundred and forty-one of the laws of nineteen hundred and nine and chapter sixty-six of the laws of nineteen hundred and ten, twenty-five one-hundredths of a mill.

For the annual contribution to the canal debt sinking fund, pursuant to chapter three hundred and ninety-one of the laws of nineteen hundred and nine, and chapter one hundred and thirty-nine of the laws of nineteen hundred and ten, fifteen one-thousandths of a mill.

L. 1912, ch. 209.

Rate of direct tax.

§ 1.

For the annual contribution to the barge canal terminals sinking fund, pursuant to chapter seven hundred and forty-six of the laws of nineteen hundred and eleven, thirty one-thousandths of a mill.

For the annual contribution to the highway improvement sinking fund, pursuant to chapter four hundred and sixty-nine of the laws of nineteen hundred and six, fifty-five ten-thousandths of a mill.

For the annual contribution to the highway improvement sinking fund, pursuant to chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven, one hundred and eighty-three one-thousandths of a mill.

For the annual contribution to Palisades Interstate Park debt sinking fund, pursuant to chapter three hundred and sixty-three of the laws of nineteen hundred and ten, one hundred and twenty-five ten-thousandths of a mill.

TAX LAW.

(L. 1909, ch. 62.)

§ 2. Definitions.

A special franchise of a railroad does not include its rights to the bed of a navigable river, the title to which it has obtained by a grant from the state, but does include the right of a railroad company to construct and maintain tunnels under a navigable river where the right proceeds entirely from the grant. *People ex rel. H. & M. R. Co. v. Tax Commissioners* (1911), 203 N. Y. 119.

The provision which exempts crossings outside a city or incorporated village and authorizes assessments upon crossing in cities or villages is not a denial of the equal protection of the laws within the Constitution of the United States, as under said act every railroad company is assessed in the same way upon the same class of property and the burden falls upon each alike. The provisions of the Railroad Law granting to railroad corporations the right to construct their roads across, along or upon highways may fairly be construed as a grant across streets thereafter opened, and such a grant is a franchise within the meaning of the Tax Law. *N. Y. C. & H. R. R. Co. v. Woodbury* (1910), 74 Misc. 130, 133 N. Y. Supp. 135.

If after the railroad company has secured its right-of-way over private lands, a public highway is laid across its tracks, it is not a crossing made by the railroad, or through public favor, so far as the railroad is concerned, and hence is not liable to taxation as a special franchise. *People ex rel. N. Y. C. & H. R. R. Co. v. Woodbury* (1911), 203 N. Y. 167.

The term "surface" as applied to railroads does not refer exclusively to street railroads and hence a special franchise includes railroads operated by steam and the crossings made by constructing such railroads across streets already in existence. *People ex rel. N. Y. C. & H. R. R. Co. v. Woodbury* (1911), 203 N. Y. 167.

Right of railroad company to enter streets, when not special franchise.—Although the right to enter the street is, under the statute, a special franchise, it seems that it should be limited to a case where the privilege to occupy the street or highway results solely from permission by the proper authorities, and where the railroad company has no estate or interest in the land itself over which it is operating its road. When a railroad is maintaining and operating its road upon its own right of way, and what is done therein is done by virtue of the ownership of the soil or of some interest therein, even although this right of way may be included within parallel lines upon either side thereof, constituting the boundaries of a street or highway, this right is not a special franchise subject to taxation. Thus, where a railroad company's right to use a portion of a street is not by public favor, but because of its ownership of an easement therein, acquired for a valuable consideration, pursuant to contract and legislative act, contemporaneously with the construction of the street itself, and as a part of the general scheme therefor, it is not taxable as a special franchise. *People ex rel. Long Island R. R. Co. v. Tax Comrs.* (1912), 148 App. Div. 751.

§ 4. Exemption from taxation.—*Subdivision 21, added by L. 1912, ch. 267, in effect Apr. 11, 1912, as follows:*

21. Household furniture and personal effects to the value of one thousand dollars.

Property of a municipality is not subject to taxation, whether it be employed for public uses or held in a proprietary capacity in trust for the public. *People ex rel. Hollock v. Purdy* (1911), 72 Misc. 122, 130 N. Y. Supp. 1077.

L. 1912, ch. 249.

Forestry lands; exemption.

§§ 9, 10, 16.

Moneys deposited in United States Postal Savings Banks are subject to taxation by the State of New York. Rept. of Atty. Genl. (1911), Vol. 2, p. 620.

§ 9. Place of taxation of real property.

Real estate divided by a tax district line should be assessed in parcels in the respective districts according to its location. Rept. of Atty. Genl., Feb. 10, 1912.

§ 10. Taxation of real property divided by line of tax district.

There exists a repugnancy between this section and section 9 in cases where a portion of the real estate is in a tax district other than the district in which the dwelling is situated. Section 10 requires assessment in the tax district in which the dwelling house is located, and section 9, as amended in 1911, requires assessment in the district in which the real estate is located. This repugnancy forces the conclusion that section 10 is superseded and impliedly repealed by the amendment of section 9. Rept. of Atty. Genl., Feb. 10, 1912.

§ 16. Exemption and reduction in assessment of lands planted with trees for forestry purposes.—Whenever the owner of lands, to the extent of one or more acres and not exceeding one hundred acres, shall plant the same for forestry purposes with trees to the number of not less than eight hundred to the acre, and whenever the owner of existing forest or brush lands to the extent of one or more acres and not exceeding one hundred acres, shall underplant the same with trees, to the number of not less than three hundred to the acre, and proof of that fact shall be filed with the assessors of the tax district or districts in which such lands are situated as hereinafter provided, such lands so forested shall be exempt from assessment and taxation for any purpose for a period of thirty-five years from the date of the levying of taxes thereon immediately following such planting, and such existing forest or brush lands so underplanted shall be assessed at the rate of fifty per centum of the assessable valuation of such land exclusive of any forest growth thereon for a period of thirty-five years from the date of the levying of taxes thereon immediately following such underplanting. The owner or owners of lands forested as above provided, in order to secure the benefits of this section, shall file with the conservation commission an affidavit making the due proof of such planting or underplanting and setting forth an accurate description of such lands, the town and county in which the same are situated, the number of trees planted or underplanted to the acre and the number of acres so forested, which affidavit shall remain on file in the office of said commission. Upon the filing of such affidavit it shall be the duty of the conservation commission to cause an inspection of such forested lands to be made by a competent forester or other employee of said commission who shall make and file with said commission a written report of such inspection. If the commission is satisfied from the said affidavit and the report of inspection that the lands have been forested as above provided, in good faith and by adequate methods to produce a forest plantation, and are entitled to the exemption of assessment or to a reduction of assessment as provided in this section, it shall make and execute a certificate under the seal of its office, and file the same with the county treasurer of the county in

which the lands so forested are located, which certificate shall set forth a description of the lands affected by this section, the area and owner or owners thereof, the town or towns in which the same are situated, the description upon the last assessment-roll which included said lands, the period of exemption or of reduction of assessment to which such lands are entitled and the date of the expiration of such exemption or reduction of assessment. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of the tax district in which the lands described therein are located within ten days after receipt thereof a certified copy of such certificate, and the assessors of such tax district shall place the lands according to the description contained in said certificate upon the next assessment-roll prepared for the assessment of lands within such tax district, and shall exempt, or reduce the assessment upon, the lands so described as hereinbefore provided, and shall insert upon the margin of said assessment-roll opposite the description of said lands, a statement that in accordance with the provisions of this section of the tax law said lands are exempt from taxation or that the assessment thereof is reduced fifty per centum as the case may be and insert also in the margin the date of the expiration of such exemption or reduction of assessment and such lands shall continue to be exempted, assessed and carried in such manner upon the assessment-rolls of such town until the date of the expiration of such exemption or reduction of assessment. Lands which have been forested as above provided within three years prior to the taking effect of this section may come within its provisions if application therefor is made to the conservation commission within one year from the time when this section takes effect, but except as provided by this section the period of exemption or reduction as certified to by the conservation commission shall not exceed the period of thirty-five years from the date of the original planting. Lands situated within twenty miles of the corporate limits of a city of the first class, or within ten miles of the corporate limits of a city of the second class, or within five miles of the corporate limits of a city of the third class, or within one mile of the corporate limits of an incorporated village shall not be entitled to the exemption or reduction of assessment provided for by this section. In the event that lands exempted or reduced in taxation as above provided shall, by act of the owner or otherwise, at any time during the period of exemption or reduction in taxation cease to be used exclusively as a forest plantation to the extent provided by this section to entitle such land to the privileges of this section, the said exemption and reduction in taxation provided for in this section shall no longer apply and the assessors having jurisdiction are hereby empowered and directed to assess the said land at the value and in the manner provided by the tax law for the general assessment of land. If any land exempted under this section continues to be used exclusively for the growth of a planted forest after the expiration of the period of exemption provided hereby, the land shall be assessed at its true value and the timber growth thereon shall be exempt from taxation, except

if such timber shall be cut before the land has been duly assessed and taxes regularly paid for five consecutive years after the exemption period has expired, such timber growth shall be subject to a tax of five per centum of the estimated stumpage value at the time of cutting, unless such cuttings are thinnings for stimulating growth and have been made under the supervision of the conservation commission. Whenever the owner shall propose to make any cutting of such timber growth for a purpose other than for thinning as above provided, he shall give thirty days' notice to the assessors of the tax district on which the land is located, who shall forthwith assess the stumpage value of such proposed cutting, and such owner shall pay to the collector of the town in which such land is situated before cutting such timber five per centum of such assessed valuation. If such owner shall fail to give such notice and pay such taxes he shall be liable to a penalty of three times the amount of such tax, and the supervisor of the town may bring an action to recover the same for the benefit of the town in any court of competent jurisdiction. (*Added by L. 1912, ch. 249, in effect April 10, 1912.*)

§ 17. **Exemption and reduction in assessment of lands maintained as wood lots and to encourage the growth of trees for such purposes.**—In order to encourage the maintenance of wood lots by private owners and the practice of forestry in the management thereof, the owner of any tract of land in the state, not exceeding fifty acres, which is occupied by a natural or planted growth of trees, or by both, which shall not be situated within twenty miles of the corporate limits of a city of the first class, nor within ten miles of the corporate limits of a city of the second class, nor within five miles of the corporate limits of a city of the third class, nor within one mile of the corporate limits of an incorporated village, may apply to the conservation commission in manner and form to be prescribed by it, to have such land separately classified for taxation. Application for such classification shall be made in duplicate and accompanied by a plot and description of the land, and such other information as the commission may require. Upon the filing of such application it shall be the duty of the commission to cause an inspection of such land to be made by a competent forester for the purpose of determining whether or not it is of a suitable character to be so classified. If the commission shall determine that such land is suitable to be so classified, it shall submit to the owner a plan for the further management of said land, and trees and shall make and execute a certificate under the seal of the commission and file the same with the county treasurer of the county in which the land is located, which certificate shall set forth a description and plot of the land so classified, the area and owner thereof, the town or towns in which the same is situated, and that the land has been separately classified for taxation in accordance with the provisions of this section. Upon the filing of such certificate it shall be the duty of the county treasurer to file with the assessors of the tax district in which the land described therein is located, within ten days after receipt

thereof, a certified copy of such certificate. So long as the land so classified is maintained as a wood lot, and the owner thereof faithfully complies with all the provisions of this section and the instructions of the commission, it shall be assessed at not to exceed ten dollars per acre and taxed annually on that basis. In fixing the value of said lands for assessment, the assessors shall in no case take into account the value of the trees growing thereon, and said land shall not be assessed at a value greater than other similar lands within the same tax district, which contain no forest or tree growth, are assessed. The assessors of each tax district where said land so classified is located shall insert upon the margin of said assessment and opposite the description of such land a statement that said land is assessed in accordance with the provisions of this section. In the event that land so classified as above prescribed shall at any time by act of the owner or otherwise cease, in the judgment of the commission, to be used exclusively as a wood lot to the extent provided by this section to entitle the owner of such land to the privileges of this section, the exemption and valuation in taxation provided for in this section shall no longer apply and the assessors having jurisdiction shall, upon the direction of the commission assess the said land at the value and in the manner provided by the tax law for the general assessment of land. Whenever the owner shall propose to cut any live trees from said land, except for firewood or building material for the domestic use of said owner or his tenant, he shall give the commission at least thirty days notice prior to the time he desires to begin cutting, who shall designate for the owner the kind and number of trees, if any, most suitable to be cut for the purpose for which they are desired, and the cutting and removal of the trees so designated shall be in accordance with the instructions of said commission. After such trees are cut and before their removal from the land, the owner shall make an accurate measurement or count of all of the trees cut and file with the assessors of the tax district a verified, true and accurate return of such measurement or count and of the variety and value of the trees so cut. The assessors shall forthwith assess the stumpage value of the timber so cut, and such owner shall pay to the tax collector of the town in which such land is situated, before the removal of any such timber, five per centum of such valuation. If such owner shall fail to give such notices and pay such taxes he shall be liable to a penalty of three times the amount of such tax, and the supervisor of the town may bring an action to recover the same for the benefit of the town in any court of competent jurisdiction. (*Added by L. 1912, ch. 363, in effect Apr. 15, 1912.*)

§ 20. **Ascertaining facts for assessment.**—The assessors in each tax district shall annually between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein, except that in towns containing an incorporated village having a population of more than ten thousand inhabitants, according to the last state

census, the assessors may have from April fifteenth until July first to ascertain the taxable property and names of persons taxable in such towns, and except that in towns containing an incorporated city having a population of more than ten thousand inhabitants, according to the last state census, where said city so situated shall have its own separate board of assessors, the town assessors may have from May first to July first to ascertain the taxable property and names of persons taxable in such towns, and provided that the town board in any town may, by resolution, determine that a longer time is required by the assessors of the town than is hereinabove provided for, and may, in such resolution, determine that the assessors of such town shall begin their work at a time after the first day of January in any year to be fixed in such resolution. The comptroller shall on or about May fifteenth in each year transmit to the assessors of each tax district a statement of all lands owned by the state in such district, and such statement shall be used by the assessors in making up their assessment-rolls and shall be considered by them as their authority to assess to the state such of the lands described thereon as are legally subject to taxation. (*Amended by L. 1911, chs. 116, 805 and L. 1912, ch. 270, in effect Apr. 11, 1912.*)

§ 21. Preparation of assessment-roll.—They shall prepare an assessment-roll in three parts.

Part one shall contain the assessment of real property exclusive of special franchises; part two shall contain the assessment of personal property; part three shall contain the assessment of special franchises.

Part one shall contain seven columns, in which, according to the best information in their power, they shall set down:

1. In the first column, the name of the owner or the last known owner or reputed owner of each parcel or portion of real property separately assessed. Such name shall be regarded as an aid to identify such parcel or portion. A mistake in the name of the owner, or the last known owner, or reputed owner, shall not affect the validity of the assessment against the parcel or portion.

2. In the second column, a description of such parcel or portion of real property separately assessed, sufficiently accurate to identify the same. As soon as the tax map of the district shall be prepared and adopted by the assessors, the number or numbers of such parcel or portion on the tax map shall be entered and shall be deemed a sufficient description thereof.

3. In the third column, a statement of the approximate quantity of the square feet, square rods or acres contained in such parcel or portion or a statement of the linear dimensions thereof.

4. In the fourth column, the full value of such parcel or portion of real property.

5. In the fifth column, the full value of such parcel or portion if the same is included within an incorporated village and the name of the village.

6. In the sixth column there shall be entered by the proper official the amount of the tax levied against such parcel or portion of real property.

7. In the seventh column, there shall be entered by the proper official the date of the payment of such tax.

Part two shall contain seven columns, in which, according to the best information in their power, they shall set down:

1. In the first column, the names of all persons and corporations in the tax district, taxable on personal property.

2. In the second column, the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

3. In the second column, the value of taxable rents reserved and chargeable upon lands within the tax district estimated at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents, and if payable in anything except money, the value of the rents in money to be ascertained by them and the value of each rent assessed separately.

4. In the fourth column, the full value of the capital stock of each corporation assessed pursuant to the provisions of section twelve of this chapter.

5. In the fifth column, the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him when such person resides in an incorporated village and the name of the village, and the full value of the capital stock of each corporation, assessed pursuant to the provisions of section twelve of this chapter, when such corporation has its principal office in an incorporated village and the name of the village.

6. In the sixth column, there shall be entered by the proper official the amount of the tax levied against such person or corporation named.

7. In the seventh column, there shall be entered by the proper official the date of the payment of such tax.

Part three shall contain six columns in which there shall be set down:

1. In the first column, the names of each corporation, association, copartnership or person taxable on a special franchise.

2. In the second column, a description of the special franchise in such form as the state board of tax commissioners shall prescribe.

3. In the third column, the value of the special franchise as fixed by the state board of tax commissioners.

4. In the fourth column, such part of the value of the special franchise as fixed by the state board of tax commissioners and which shall have been apportioned to an incorporated village in the manner provided in this chapter and the name of the village.

5. In the fifth column, there shall be entered by the proper official the amount of the tax levied against the corporation, association, copartnership or person named.

L. 1912, chs. 245, 269.

Assessment of state lands.

§§ 21-b, 22.

6. In the sixth column, there shall be entered by the proper official the date of the payment of such tax. (*Amended by L. 1911, ch. 315, and L. 1912, ch. 266, in effect Apr. 11, 1912.*)

§ 21-b. **Assessment of certain real property in Suffolk county.**—Real property within the county of Suffolk owned by a single individual or corporation, or in common by two or more individuals or corporations, or both, shall not for the purpose of assessment or taxation be deemed to be separable into parcels, from the fact that the same is, or at any time has been subdivided into lots, plots or other subdivisions but all portions, lots, plots or subdivisions into which a single tract of land has been subdivided shall, so long as they remain in a common ownership, be held and treated for the purpose of assessment and taxation and sale for taxes as a single tract, and shall be so assessed. The assessors may, for the purpose of identification add to the metes and bounds, or other means by which any such tract is described, a reference to the map showing the subdivisions of such property, and the date of filing the same in the office of the clerk of Suffolk county, and may state the number of lots embraced in such description by lot numbers or grouped within including figures without unnecessary repetition, but no assessment shall be invalidated by the fact that any tract assessed as a single parcel is, or may be, composed of two or more parcels owned separately by two or more individuals, nor by any error of the assessors in respect of the ownership of any parcel assessed. (*Added by L. 1912, ch. 269, in effect Apr. 11, 1912.*)

§ 22. **Assessment of state lands.**—All wild or forest land within the forest preserve and also all such lands owned by the state in the towns of Altona and Dannemora, county of Clinton, except the lands in the town of Dannemora upon which buildings and inclosures are erected and maintained by the state for the use of state institutions, together with said buildings thereon, shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year the assessors of the town within which the lands so belonging to the state are situated shall file in the office of the comptroller and of the conservation commission, a copy of the assessment-roll of the town, which in addition to the other matter now required by law, shall state and specify which and how much, if any, of the lands assessed are forest lands, and which and how much, if any, are lands belonging to the state; such statements and specifications to be verified by the oaths of a majority of the assessors. The comptroller shall thereupon and before the first day of September following, and after hearing the assessors and the conservation commission, if they or any of them so desire, correct or reduce any assessment of state lands which may be in his judgment an unfair proportion to the remaining assessment of land within the town, and shall in other respects approve the assessment and communicate such ap-

§§ 24, 30, 34, 36, 37.

Hearing complaints.

L. 1912, ch. 245.

proval to the assessors. No such assessment of state lands shall be valid for any purpose until the amount of assessment is approved by the comptroller, and such approval attached to and deposited with the assessment-roll of the town, and therewith delivered by the assessors of the town, to the supervisor thereof or other officer authorized to receive the same from the assessors. No tax for the erection of a schoolhouse or opening of a road shall be imposed on the state lands unless such erection or opening shall have first been approved in writing by the conservation commission. (*Amended by L. 1912, ch. 245, in effect April 10, 1912.*)

This section is designed only to protect the state from an over-valuation of the lands assessed to it and does not empower the Comptroller to require lands assessed to individuals to be assessed to the state. *People ex rel. Town of Brighton v. Williams* (1911), 145 App. Div. 8, 129 N. Y. Supp. 457.

Mandamus requiring the State Comptroller to approve an assessment roll containing assessment of forest lands against the state should be made within the Third Judicial District. *People ex rel. Town of Brighton v. Williams* (1911), 145 App. Div. 8, 129 N. Y. Supp. 457.

§ 24. Bank shares, how assessed.

Assessment of stock of banks.—The fact that a part of the surplus or undivided profits of a bank are invested in barge canal bonds which are exempt from taxation does not authorize the assessors to deduct the amount of such bonds from the amount of the capital stock, surplus and undivided profits of such bank in assessing the shares of stock of banks under this section. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 565.

§ 30. Tax map in each district.

The expenses necessarily incurred by assessors in preparing tax maps, pursuant to the provisions of this section, are charges against the municipality which they represent. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 639.

§ 34. Assessment of omitted property.

Application.—This section does not provide for a new assessment or for a re-assessment of an assessment canceled by the judgment of a court of competent jurisdiction, and does not authorize an assessment for taxes without any notice to the party sought to be taxed or any opportunity being given to be heard in reference to the same. *People ex rel. Glen Head Realty Co. v. Garland* (1911), 72 Misc. 413, 131 N. Y. Supp. 180.

§ 36. Notice of completion of assessment-roll.

Completion of assessment roll on August first mandatory.—The provisions of this section that the town board of assessors shall complete the assessment roll on or before the first day of August is mandatory and after said date no property can be legally added to the roll. *People ex rel. Suburban Investment Co. v. Miller* (1911), 73 Misc. 214, 131 N. Y. Supp. 868.

§ 37. Hearing of complaints.

Service of a notice or statement, as required by this section, is not effected by the delivery of said statement to the clerk if the board of assessors was not in session or in or about the office at the time. *People ex rel. Suburban Investment Co. v. Miller* (1911), 73 Misc. 214, 131 N. Y. Supp. 868.

L. 1912, ch. 271. Apportionment of values of railroads, etc. §§ 39, 40.

§ 39. Filing of roll and notice thereof.

The provision as to the publication of notice of the completion and filing of the assessment roll is directory merely, its purpose being to set running the fifteen days within which to sue out a writ of certiorari. *People ex rel. Sweet v. Blake* (1911), 72 Misc. 646, 132 N. Y. Supp. 191.

§ 40. Assessors to apportion valuation of railroad, telegraph, telephone or pipe line companies and of special franchises among school and special districts.

—The assessors of each town in which a railroad, telegraph, telephone or pipe line company is assessed by them, upon property lying in more than one school district therein or in one or more special districts therein in which a tax is levied for district purposes, shall, prior to the final completion of the roll pursuant to section thirty-nine of this chapter, apportion the assessed valuation of the property of each of such corporations among such school and special districts. Such * appointments shall be entered by the assessors in the appropriate column of the assessment-roll and a certificate thereof signed by the assessors or a majority of them filed with the town clerk within five days thereafter, and thereupon the valuations so apportioned shall become the valuations of such property in such districts for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either the trustee of any school district or the officers of any special district or of the corporation assessed. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year. The assessors of each town in which an assessment has been made by the state board of tax commissioners in gross, upon a special franchise, lying in more than one school or other special district therein, shall within fifteen days after the receipt by the town clerk of the certified statement of the equalized valuation of such special franchise, as provided in section forty-five-a of this chapter, apportion the assessed valuation of each special franchise among such school and special districts. The apportionment shall be signed by the assessors or a majority of them and be filed, within five days thereafter, with the clerk of the board of supervisors and a duplicate thereof shall be filed with the town clerk. Such apportionments shall be entered by the board of supervisors at their annual meeting in the appropriate column of the assessment-roll for each town before the warrant is annexed thereto. The valuations so apportioned shall be the valuations of the special franchise in such school and special districts for the purpose of taxation. The town clerk shall furnish the trustees of school districts a certified statement of the valuations apportioned to their respective districts. Provided however that the valuations of special franchises as determined by the state board of tax commissioners and included in the town assessment-rolls completed and filed in the town

* So in original; should be "apportionments."

SUP. III—32

§§ 43, 48, 57.

Assessment of special franchises.

L. 1912, ch. 271.

clerk's offices for the year nineteen hundred and eleven shall be taken by the boards of assessors as the basis of the apportionment for school district purposes for the levy of any school taxes which may be made prior to the receipt by the town clerk of the statement of the assessments of special franchises as finally fixed and equalized for the year nineteen hundred and twelve. (*Amended by L. 1912, ch. 271, in effect Apr. 11, 1912.*)

§ 43. Assessment of special franchises.

The object in assessing a special franchise tax is not necessarily to produce a tax upon the intangible rights of the corporation, but to determine what the special franchise is worth. If the basis of computation be right it is immaterial whether a tax on the intangible part of the franchise results or not. *People ex rel. Brooklyn Heights R. R. Co. v. Tax Comrs.* (1911), 146 App. Div. 372, 131 N. Y. Supp. 49.

Power and authority of State Board of Tax Commissioners to determine valuation of special franchises.—The intention of the Tax Law is to give the State Board of Tax Commissioners exclusive power and authority to fix and determine the valuation of each special franchise subject to assessment in each city, town and tax district, and to lodge in local boards and officers the power and authority to apportion the valuation of a single special franchise for the purposes of assessment among school districts and where for other special reason it is required. *People ex rel. Troy Gas Co. v. Hall* (1911), 203 N. Y. 312.

Application of the net earnings rule as laid down in *People ex rel. Jamaica Water Supply Co. v. Tax Commissioners*, 196 N. Y. 39; *People ex rel. Manhattan Ry. Co. v. Woodbury* (1911), 203 N. Y. 231.

An assessment for a special franchise tax on a trolley railroad made under the net earnings rule will not be disturbed on appeal because a holding company controlling the railroad charged it, together with other railroads, for power furnished, for management, etc., upon a car mileage basis pursuant to an agreement, where it does not appear that the railroad is paying too much for such services. *People ex rel. Brooklyn H. R. R. Co. v. Tax Comrs.* (1911), 146 App. Div. 372, 131 N. Y. Supp. 49.

In assessing a special franchise tax on a railroad company it should be allowed the expense of maintaining a fund for keeping its plant and machinery in a good and efficient condition, and to improve its machinery in the future, if the sum be accumulated in good faith for such purpose and not to avoid taxation. *People ex rel. Brooklyn H. R. R. Co. v. Tax Comrs.* (1911), 146 App. Div. 372, 131 N. Y. Supp. 49.

Apportionment of special franchise between school district and territory under control of board.—Where certain territory in a city constitutes a separate school district which is not subject to taxation for general school purposes, the city assessors are authorized to apportion a special franchise, the full value of which has been determined by the State Board of Tax Commissioners, between such school district and the territory under the control of the board of education of such city. *People ex rel. Troy Gas Co. v. Hall* (1911), 203 N. Y. 312.

§ 48. Deduction from special franchise tax.

Waiver.—The provisions of this section may be waived by a street railway company. *City of Ithaca v. Ithaca Street R. Co.* (1911), 145 App. Div. 675, 130 N. Y. Supp. 359.

§ 57. Reassessment of property illegally assessed.

Application.—This section does not apply to village assessors. *People ex rel. Glen Head Realty Co. v. Garland* (1911), 72 Misc. 413, 131 N. Y. Supp. 180.

L. 1912, ch. 221.

Collection of taxes; comptroller's deed. §§ 71, 73, 105, 131, 134.

§ 71. Collection of taxes.

Enforcement of taxes where not collected by distress.—Where taxes are not collected by distress of the goods of the taxpayer upon the collector's certifying his inability to collect them, the property assessed must be described definitely, added to the next year's roll and again placed in the collector's hands; and, in case of his inability then to collect it, the unpaid tax must be certified to the State Comptroller and collected by sale of the land, and, if these proceedings are not taken at the time and in the manner prescribed by statute, their omission cannot be supplied at a later date. *Matter of Bodine* (1911), 74 Misc. 498.

§ 73. Payment of taxes by railroad and certain other corporations.—Any railroad, telegraph, telephone, electric-light or gas company including a company engaged in the business of supplying natural gas, may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time. (*Amended by L. 1912, ch. 221, in effect Apr. 8, 1912.*)

§ 105. Transmittal of statement of cancelled taxes to board of supervisors.

Adjournment from day to day, provision as to, is merely directory. *People ex rel. Sweet v. Blake* (1911), 72 Misc. 646, 132 N. Y. Supp. 191.

§ 131. Comptroller's deed and application therefor.

Proof in action for breach of covenant against incumbrances by reason of tax sale; measure of damages.—Where more than two years have expired since the tax sale, one claiming a breach of a covenant against incumbrances by reason of the tax sale is not bound to show affirmatively that the proceedings leading to the sale were regular. In order to recover, it is only necessary for him to place the tax deed in evidence and prove the amount he was obliged to pay to redeem the land. Moreover, the amount of the tax originally levied is not the measure of damages, but the amount paid to free the lands from the incumbrance. *Dinny v. Brown* (1912), 148 App. Div. 671.

§ 134. Notice to occupants.

Occupancy of lands, within the Tax Law, does not mean that the owner or representative must build a house and reside upon the particular part of the lands sold for taxes. Thus, the establishment of a club house has been held to be a sufficient occupancy. *People ex rel. Lake Placid Co. v. Williams* (1911), 145 App. Div. 34, 129 N. Y. Supp. 767.

Evidence as to failure to give notice to occupant, see *Cary v. Gwin* (1911), 144 App. Div. 221, 129 N. Y. Supp. 35.

§ 156. When purchase money to be refunded.—Whenever any purchaser under such sale shall be unable to regain possession of the real estate purchased by him, or when the county treasurer shall have canceled any such sale, or when any such sale shall have been canceled by a judgment of a

§§ 181, 182, 197, 220.

Tax on corporations.

L. 1912, ch. 268.

court of competent jurisdiction, in either case by reason of an error * of irregularity in the assessment or levying of a tax, or in proceedings for the collection thereof, the board of supervisors of the county shall refund the purchase money so paid, with interest upon the same being presented and audited as other county charges, and such money shall be charged to the tax district from which the tax was returned, and the same shall be levied and collected in the succeeding year and paid to the county treasurer. (*Amended by L. 1912, ch. 268, in effect Apr. 11, 1912.*)

§ 181. License tax on foreign corporations.

Basis of license tax on foreign corporations.—The tax imposed on foreign corporations doing business in this state by this section, as amended by Laws of 1906, chapter 474, is to be computed on the par value of their capital stock employed in this state. As the organization and license tax imposed on corporations by sections 180 and 181 had an origin and purpose distinct from that of the franchise tax imposed by section 182, the sections imposing the two taxes will be treated as though they had remained separate statutes and had not been brought together in the statutory revision. *People ex rel. Elliott-Fisher Co. v. Sohmer* (1911), 148 App. Div. 514.

Right of action in the federal courts is not affected by this section. *Richmond Cedar Works v. Buckner*, 181 Fed. 424 (1910).

§ 182. Franchise tax on corporation.

When franchise taxes levied upon a corporation, during pendency of receivership in foreclosure, constitute a lien on the corporate property prior to other incumbrances.—The property of a corporation exercising a franchise was sold to plaintiff on foreclosure, subject to all taxes which might be liens thereon. The property was operated previous to the sale by a receiver *pendente lite* appointed in the foreclosure action; during this period franchise taxes, for the privilege of doing business or exercising its corporate franchises, were levied upon the corporation by the Comptroller of the state under this section. It was held, that such taxes constituted liens upon the property paramount to all prior incumbrances, and that plaintiff took the corporate property subject to these liens, and, in effect, thereby agreed that the property was, primarily, liable for their payment. *New York Terminal Co. v. Gans* (1912), 204 N. Y. 512.

§ 197. Payment of tax and penalty for failure.

Lien of tax.—This section does not give the state a priority for an unpaid tax over a prior mortgage. In this state the state does not succeed to all the prerogatives of the British crown, among others the right to a preference for debts due it over all other creditors. Undoubtedly the state has the power to confer the priority, but such a construction of the act should not be adopted unless the language used compels it. The Legislature intended to make the tax a lien upon the property in its condition when the tax accrued. *Central Trust Co. v. Third Ave. R. Co.*, 186 Fed. 291 (1911).

§ 220. Taxable transfers.

Constitutionality.—The statute imposing a transfer tax is not unconstitutional because transfers to some individuals are taxed at a higher rate than like transfers to others. *Matter of Patterson* (1911), 146 App. Div. 286, 130 N. Y. Supp. 970.

* So in original.

Constitutionality; property passing under trust deed.—A transfer tax on property passing by deed of a resident, intended to take effect in possession or enjoyment at or after the death of the grantor, is not unconstitutional as taking property without due process of law, nor does it deny the equal protection of the law by arbitrary classification of the subject-matter or by different rates of taxation depending on the relationship of the beneficiaries of the grantor. The privilege of acquiring property by trust instrument, taking effect on the death of the grantor, is as much dependent on the law as that of acquiring property by inheritance and is subject to taxation. A state may impose a transfer tax based on personal property passing under a trust deed to a resident to take effect at the grantor's death if the property had its situs in that state when the deed was made, though at the time of the grantor's death the personal property may be without the state. *Keeney v. New York*, 222 U. S. 525 (1911), aff'g *Matter of Keeney*, 194 N. Y. 281.

Appraiser bound by proof of value.—In assessing the value of property for the purpose of the transfer tax the appraiser is bound by the proof of value before him and may not assess property at a higher rate than the proof justifies because it has been done in other cases. *Matter of Willmer* (1911), 75 Misc. 62.

Shares of stock.—Where shares in a joint stock association, doing business in this state and in several others, pass to the legatees or distributees of a non-resident owner, the transfer is taxable in this state only to the extent of the proportionate amount of the total assets of the association located in this state. *Matter of Willmer* (1911), 75 Misc. 62.

Transfer "by intestate laws."—The personal estate of a woman, a resident of this state, who dies intestate leaving a husband and no descendants is not subject to a transfer tax. Such property is not transferred to him "by the intestate laws" within the meaning of this section. *Matter of Green* (1911), 144 App. Div. 232, 129 N. Y. Supp. 54.

Taxation of property passing under a power of appointment.—Under the provisions of sections 220 and 230 property passing under a power of appointment should be taxed on the transfer by the exercise of that power, the same as if the donee of that power was the owner of the property; and hence the remainders are not taxable until the death of such donee, but this rule applies only where there is an absolute gift of a power of appointment, so that the property is certain to pass either under the exercise or non-exercise of the power. The court, in determining what should be the rate of the tax when the property is not certain to so pass, must look at the persons to whom the property may in any contingency pass, on the assumption that the power of appointment never will vest in any of the appointees. Upon examination of the terms of the will in question, *held*, that in no contingency can any person succeed to the remainder under the will—apart from the exercise or non-exercise of the power of appointment—except the lineal descendants of the testator taxable at the rate of one per cent., subject to future contingencies as to the succession to the property in case the power of appointment vests. *Matter of Burgess* (1912), 204 N. Y. 265, aff'g 146 App. Div. 348, 130 N. Y. Supp. 686.

Intention that transfer become effective at grantor's death.—Under a deed of trust by which the grantor transferred all her property to trustees to collect the income and pay a certain amount thereof to the grantor for life, the residue, if any, to certain beneficiaries named, with a proviso that if the net income be insufficient to pay the grantor, the principal be applied to that purpose, with a further direction that on the death of the grantor the trustees convert the assets into money and distribute the same in equal shares to persons named, and providing, further, that if a beneficiary should not survive the grantor, his share shall pass to his next of kin, as provided by the statute in cases of intestacy, or that if the next of kin have died before such distribution, his share shall become the property of his next

§ 221.

Taxable transfers; exceptions.

L. 1912, ch. 206.

of kin, as provided in the statute, the beneficiaries are only entitled to possession and enjoyment of their shares in the fund if living at the death of the grantor. Hence, it was intended that the transfer should become effective at the grantor's death, and the gifts are subject to a transfer tax. *Matter of Patterson* (1911), 146 App. Div. 286, 130 N. Y. Supp. 970.

Proof of gifts inter vivos.—In transfer-tax proceedings the court will require, on the part of donees and beneficiaries claiming that property of the decedent passed to them as a gift in his lifetime and that the transfer is not taxable, satisfactory and convincing proof that such gifts were made *inter vivos* with the intent to pass title and possession at the time of the making of the alleged gifts. Where the only proof of such a gift consists of the testimony of a son of decedent that, about four months prior to his death, the decedent told him he was getting old and would like to give his children certain bonds and mortgages then in a vault in the stock exchange building and directed the witness to take them out and if any of his children needed any of the bonds to give them to them, and that the witness went to the vault the next day, took out the securities and put them in his own vault, in the absence of evidence that the decedent spoke to any of his other children in regard to the alleged gift, the proof will not be held sufficient to sustain it. *Matter of Loewi* (1911), 75 Misc. 57.

§ 221. Exceptions and limitations.—Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in affecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. (*Amended by L. 1910, chs. 600, 706; L. 1911, ch. 732, and L. 1912, ch. 206, in effect Apr. 8, 1912.*)

Exemption of educational institutions.—A corporation directed by a testator to be formed for the purpose of conducting an art gallery in the city of his residence and to which the public shall have free access under reasonable regulations, and to conduct a reference library not intended for circulating uses but free to all

L. 1912, ch. 214.

Appraisers, stenographers and clerks.

§ 229.

who may seek aid therefrom, is an educational institution. *Matter of Arnot* (1911), 145 App. Div. 708, 130 N. Y. Supp. 499.

Exemption of religious corporations.—Bequest to American Baptist Missionary Union is not subject to a transfer tax. *Matter of Lyon* (1911), 144 App. Div. 104, 128 N. Y. Supp. 1004.

§ 229. Appointment of appraisers, stenographers and clerks.—The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the county of Kings, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk and Westchester, to act as appraisers therein. The state comptroller, from time to time and whenever in his opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending before the transfer tax appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the comptroller that the services of such additional appraiser is necessary. The appraiser so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts:

In New York county, four thousand dollars; in Kings county, four thousand dollars; in Erie and Queens counties, three thousand dollars; in Westchester and Albany counties, three thousand dollars; in Nassau county and Rensselaer, two thousand dollars; in Monroe and Onondaga counties, one thousand five hundred dollars; in Dutchess, Niagara, Oneida, Orange, Richmond and Suffolk counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York county with nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, and the appraisers of Kings county with four stenographers, whose salaries shall not exceed two thousand dollars a year each; also the appraisers of Kings county with one junior clerk, whose salary shall not exceed six hundred dollars a year; one page, whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed

fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queens county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, such employees to be appointed by the state comptroller. The state comptroller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year each, such employees to be appointed by the state comptroller. Second, a sum to be used in defraying the expenses for office rent, stationary, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding ten thousand five hundred dollars a year in New York county and five thousand dollars a year in Kings county. Third, a sum not exceeding ten thousand dollars to be used in defraying the expenses for extra clerical and stenographic services in the transfer tax bureau of the comptroller's office at Albany, during the period ending September thirtieth, nineteen hundred and eleven. (*Amended by L. 1909, ch. 283; L. 1910, ch. 706; L. 1911, ch. 803 and L. 1912, ch. 214, in effect Apr. 8, 1912.*)

§ 232. Appeal and other proceedings.

Failure to file the notice of appeal in the office of the surrogate, within the time prescribed by this section, is not excused by an admission by the attorney for the State Comptroller of service of a notice of appeal. *Matter of Seymour (1911), 144 App. Div. 151, 128 N. Y. Supp. 775.*

Extension of time to appeal.—A court or judge cannot extend the time within which an appeal must be taken (*Code Civ. Pro., § 784*). *Matter of Seymour (1911), 144 App. Div. 151, 128 N. Y. Supp. 775.*

§ 234. Surrogates' assistants in New York, Kings and other counties.—The state comptroller may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogates' offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, twelve hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand dollars; an assistant clerk, fifteen hundred dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

Mortgage tax.

§§ 250, 252, 253, 255.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.
4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.
5. In Albany county, a transfer tax clerk, fifteen hundred dollars.
6. In Queens county, a transfer tax clerk, fifteen hundred dollars.
7. In Onondaga county, a transfer tax clerk, twelve hundred dollars.
8. In Monroe county, two transfer tax clerks, seven hundred and fifty dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.
9. In Dutchess county, a transfer tax clerk, nine hundred dollars.
10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.
11. In Suffolk county, a transfer tax clerk, one thousand dollars.
12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.
13. In Richmond county, a transfer tax clerk, one thousand dollars.
14. In Nassau county, a transfer tax clerk, twelve hundred dollars.

Such salaries and expenses shall be paid monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article. (*Amended by L. 1910, ch. 70; L. 1911, chs. 160, 681, 744 and L. 1912, ch. 45.*)

§ 250. Definitions.

A contract of sale under which, before the execution of the deed, the vendee may come into possession, should be taxed as a mortgage on presentation for record, unless affidavit is made that the vendor is in possession. Rept. of Atty. Genl., Mch. 22, 1912.

§ 252. Exemptions.

A legacy given to Cooper Union by a testator other than the founder who died in 1901 is subject to a transfer tax, although the charter of said institution exempts its endowments from taxation. *Matter of Kucielski* (1911), 144 App. Div. 100, 128 N. Y. Supp. 768.

§ 253. Recording tax.

Time of recording.—It is not necessary that a mortgage be recorded at once upon its delivery, and failure to do so and to pay the tax does not render the instrument void. It may be recorded and the tax paid at any time before the mortgagee seeks to enforce it. *Mutual Life Ins. Co. v. Nicholas* (1911), 144 App. Div. 95, 128 N. Y. Supp. 902.

Evidence.—No mortgage executed after July 1, 1906, can be received in evidence in any action or proceeding in this state, unless the mortgage tax thereon has been paid. *Mut. Life Ins. Co. v. Nicholas* (1911), 144 App. Div. 95, 128 N. Y. Supp. 902.

§ 255. Supplemental mortgages.

Application.—Where a contract for a lease is assigned to secure an indebtedness and on its recording is taxed as a mortgage, no further tax accrues or is due upon the lease itself when it is delivered and recorded. Rept. of Atty. Genl., Mch. 22, 1912.

§ 259. Trust mortgages.

Application.—People ex rel. Buffalo & Lake Erie Traction Co. v. Woodbury (1911), 144 App. Div. 812, 129 N. Y. Supp. 799.

Where, at the time a trustee accepted a trust under a mortgage given to secure the payment of bonds, the mortgage debt was taxable only in the hands of the owners and holders of the bonds then issued, and it does not appear that the trustees subsequently certified additional bonds or itself made advances of money, such trustee is not liable under later statutes (L. 1906, ch. 532; L. 1907, ch. 340; L. 1909, ch. 412) for the tax thereafter imposed by reason of the advancement of a further amount to the mortgagor. People v. Trust Co. of America (1912), 205 N. Y. 74, revg. 145 App. Div. 900, 129 N. Y. Supp. 939.

§ 260. Apportionment by state board of tax commissioners.

Application.—The State Tax Commissioners in assessing a recording tax on a trust mortgage covering property which lies partly within this state and partly in other states, as well as property which may be subsequently acquired, may determine the relative amount of property situate within this state and if only part of the bonds have been issued, may base the tax upon the amount of money advanced thereon before the mortgage is recorded. It also has jurisdiction to make a similar determination as each subsequent advance is made upon the bonds. People ex rel. Buffalo & Lake Erie Traction Co. v. Woodbury (1911), 144 App. Div. 812, 129 N. Y. Supp. 799.

Where a mortgage is given upon property partly within and partly without the state, which by its terms is to be applied in forthwith paying all prior mortgages upon any part of the property, the amount of such prior mortgages need not be deducted in making the apportionment and determination by the State Board of Tax Commissioners under this section. Rept. of Atty. Genl. (1911), Vol. 2, p. 561.

§ 261. Payment over and distribution of taxes.

Application.—The state is entitled to one-half of the principal and interest received by the recording officers and county treasurers from the payment of mortgage taxes, after deducting the expenses of these officials. Rept. of Atty Genl. (1911), Vol. 2, p. 563.

§ 262. Expenses of officers.

Application.—The sum allowed by the State Board of Tax Commissioners as the necessary expenses of the county clerk of Tompkins county in enforcing the provisions of the Mortgage Tax Law is by virtue of the provisions of chapter 28 of the Laws of 1909, received by him for the benefit of the county of Tompkins and must be paid over to the county treasurer as in said act provided. Rept. of Atty. Genl. (1911), Vol. 2, p. 702.

Necessary expenses of the county clerk of Oneida county, incurred in the collection of a tax on mortgages under Article XI of the Tax Law, and approved and allowed by the State Board of Tax Commissioners, may be retained by said county clerk and need not be paid over to the county treasurer. Rept. of Atty. Genl., Feb. 10, 1912.

§ 263. Supervisory power of state board.

Rules and regulations.—It is within the power of the State Board of Tax Commissioners under this section to make rules and regulations, if in its discretion it deems it wise, permitting owners of bonds upon which the mortgage tax has been paid, where such bonds were issued prior to the enactment of the Mortgage Tax Law, to present the same for indorsement. Rept. of Atty. Genl., Mch. 22, 1912.

L. 1912, ch. 292.

Tax on stock transfers.

§§ 264, 266, 270.

§ 264. Tax on prior advance mortgages.

A trust mortgage recorded prior to July 1, 1906, upon which the whole amount of the mortgage was not advanced or secured at the time of recording, is taxable under the Mortgage Tax Law whenever a further amount is advanced, accrued thereon or secured thereby, upon such sum so advanced, accrued or secured. Rept. of Atty. Genl., Jan. 19, 1912.

Where a corporate trust mortgage was executed and recorded prior to July 1, 1906, and the entire amount of bonds secured thereby was issued prior to that date, the recording officer is not required by the Tax Law to endorse upon said bonds the certificate of the payment of the tax, as provided by this section. Said section has reference merely to mortgages upon which a portion of the bonds were issued prior to the enactment of the Mortgage Tax Law and advances subsequent thereto were authorized. Rept. of Atty. Genl., Mch. 22, 1912.

§ 266. Enforcement; procedure.

Acceptance of check in payment of tax.—The mere acceptance by a recording officer of a check, certified by the drawer, for the amount of the mortgage tax does not, if presented promptly and dishonored, operate as a payment of the tax. It seems that the rule is otherwise where the holder obtains the certification. Where a check so given is presented and dishonored, an action may be brought as provided in this section to recover the amount of the tax. Rept. of Atty. Genl. (1911), Vol. 2, p. 614.

§ 270. Amount of tax.—There is hereby imposed and shall immediately accrue and be collected a tax, as herein provided, on all sales, or agreements to sell, or memoranda of sales of stock, and upon any and all deliveries or transfers of shares or certificates of stock, in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or merely with the possession or use thereof for any purpose, or to secure the future payment of money, or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure and affix the stamps and pay the tax provided by this article. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon, which stock certificates are not actually sold, nor upon such stock certificates so deposited, nor upon mere loans of stock or the return thereof. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company or corporation, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company or corporation the requisite stamps, and of such association, company or

corporation to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate, the stamp shall be placed upon the surrendered certificate; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock to which it relates, and the number of shares thereof; and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale as herein provided. (*Amended by L. 1910, ch. 38; L. 1911, ch. 352 and L. 1912, ch. 292, in effect May 1, 1912.*)

Application.—The statute relates to sales or transfers of shares or certificates of stock in "associations and companies" as well as in corporations. Rept. of Atty. Genl. (1911), Vol. 2, p. 692.

No tax is imposed on a deposit of stock as collateral security to a loan when the title to the stock is not actually transferred on the books of the corporation. The rule is otherwise, however, if by reason of a default in the payment of the loan or otherwise the transfer ripens into a sale. Rept. of Atty. Genl. (1911), Vol. 2, p. 577.

Effect of amendment of 1911.—Prior to the adoption of this amendment it was frequently contended that the statute related only to sales or transfers of stock which operated to invest the transferee with the beneficial interest in or ownership of the stock, and the amendment in question providing in express terms for a tax, not only upon sales or transfers of stock but upon deliveries or transfers of shares or certificates of stock, "whether investing the holder with the beneficial interest in or legal title to stock or merely with the possession or use thereof for any purpose," was adopted to settle this dispute. Rept. of Atty. Genl. (1911), Vol. 2, p. 697.

Since the amendment of 1911 transfers which operate to effect a change in the legal title to stock are taxable though the intermediate holder of the stock be acting merely as a trustee for the transferee. Rept. of Atty. Genl. (1911), Vol. 2, p. 695. Transfers of stock to voting trustees or nominees are taxable. Rept. of Atty. Genl. (1911), Vol. 2, p. 616.

Taxable transfers.—Where stock is issued pursuant to an agreement whereby the subscriber is on certain conditions to return a portion thereof to the treasury of the company, and a return is made accordingly, the latter transfer is taxable. Rept. of Atty. Genl. (1911), Vol. 2, p. 554.

Surrenders of certificates of stock, held by the Standard Oil Company, to its various subsidiary corporations and the issuance of new certificates of those companies to the stockholders of the Standard Oil Company are taxable transfers. Rept. of Atty. Genl., Mch. 7, 1912.

Where a corporation, as a consideration for the sale to it of the assets of a second corporation, issues and delivers certificates of its capital stock to and in the name of the selling corporation, the subsequent distribution of said stock by the directors of the latter among its stockholders according to their respective holdings in said corporation constitutes taxable transfers. Rept. of Atty. Genl. (1911), Vol. 2, p. 697.

Where a foreign insurance company has, in compliance with the provisions of section 27 of the Insurance Law, by a deed of trust transferred to certain individual

L. 1912, ch. 292.

Tax on stock transfers.

§§ 271-a, 272, 275.

trustees corporate stock, the subsequent transfer of said stock to a corporation substituted as trustee in place of such individual trustees is taxable. Rept. of Atty. Genl. (1911), Vol. 2, p. 575.

Transfers of stock to or from "nominee" are taxable under the law as amended by Chapter 352 of the Laws of 1911. Deliveries of certificates of stock, made against receipt, but without payment, by order and for account of a foreign client are taxable. Rept. of Atty Genl. (1911), Vol. 2, p. 586.

Transfers of voting trust certificates constitute transfers of stock within the meaning of the Stock Transfer Tax Law and accordingly are taxable. Rept. of Atty. Genl. (1911), Vol. 2, p. 616.

A compromise of claims for stock transfer taxes cannot be made by the Comptroller. Rept. of Atty Genl. (1911), Vol. 2, p. 583.

§ 271-a. Sale of stamps.

Constitutionality of amendment of 1911 upheld. The proprietary interest which one has in stamps purchased under the provisions of the Stock Transfer Law is of a limited and peculiar character and the Legislature may limit the right to sell such stamps to those who are duly licensed without violating the provisions of either the State or Federal Constitution. People ex rel. Isaacs v. Moran (1911), 74 Misc. 491.

Selling stamps without consent of Comptroller; defense.—It is no defense to one charged with selling stamps, issued pursuant to this section, as amended in 1911, without the consent of the State Comptroller, that when said amendment took effect he had in possession about \$1,000 worth of stamps which he had purchased under the original statute which did not require that the seller of stamps should first obtain the written consent of the State Comptroller. People ex rel. Isaacs v. Moran (1911), 74 Misc. 491.

§ 272. Penalty for failure to pay tax.—Any person or persons liable to pay the tax by this article imposed, and any one who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer or delivery of shares or certificates of stock, without paying the tax by this article imposed, and any person who shall in pursuance of any sale, transfer or agreement, deliver any stock or evidence of the sale or transfer of or agreement to sell any stock, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company or corporation, and any association, company or corporation whose stock is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months or by both such fine and imprisonment, in the discretion of the court. (*Amended by L. 1911, ch. 352 and L. 1912, ch. 292, in effect May 1, 1912.*)

§ 275. Illegal use of stamps; penalty.—Any person who shall willfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this article with intent to use such stamp, or who shall knowingly or willfully buy, prepare for use,

use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this article, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than one year, or by both such fine and imprisonment, at the discretion of the court. (*Amended by L. 1911, ch. 12, and L. 1912, ch. 292, in effect May 1, 1912.*)

§ 276. **Power of state comptroller.**—Every person, firm, company, association or corporation, engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates of stock, or conducting or transacting a brokerage business, shall keep or cause to be kept at some accessible place within the state of New York, a just and true book of account, in such form as may be prescribed by the comptroller, wherein shall be plainly and legibly recorded in separate columns, the date of making every sale, agreement to sell, delivery or transfer of shares or certificates of stock, the name of the stock and the number of shares thereof, the face value of the stock, the name of the seller or transferor, the name of the purchaser or transferee and the number and face value of the adhesive stamps affixed as provided for by section two hundred and seventy of this chapter.

Every association, company or corporation shall keep or cause to be kept at some accessible place within the state of New York, a stock certificate book and a just and true book of account, transfer ledger or register, in such form as may be prescribed by the comptroller, wherein shall be plainly and legibly recorded in separate columns the date of making every transfer of stock, the name of the stock and the number of shares thereof, the serial number of each surrendered certificate, the name of the party surrendering such certificate, the serial number of the certificate issued in exchange therefor, the number of shares covered by said certificate, the name of the party to whom said certificate was issued and the number and face value of the adhesive stamps affixed, as provided by section two hundred and seventy of this chapter. It shall also retain and keep all surrendered or canceled shares or certificates of its stock and all memoranda relating to the sale or transfer of any thereof. All such books of account, transfer ledgers, registers and stock certificate books, shall be retained and kept as aforesaid for a period of at least two years subsequent to the date of the last entry made therein as herein required; and all such surrendered or canceled shares or certificates of stock and memoranda relating to the sale or transfer of stock, shall be retained and kept for a period of at least two years from the date of the delivery thereof. For the purpose of ascertaining whether the tax imposed by this article has been paid, all such books of account, transfer ledgers, registers, stock certificate books, surrendered

L. 1912, ch. 292.

Tax on stock transfers.

§ 277.

or canceled shares or certificates of stock and memoranda relating to the sale or transfer thereof, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays and legal holidays, be open to examination by the comptroller or his duly authorized representative.

The comptroller may enforce his right to examine such books of account and bills or memoranda of sale or transfer; and such transfer ledger, register and stock certificate books and *surrender or canceled shares or certificates of stock by mandamus. If the comptroller ascertains that the tax provided for in this article has not been paid, he shall bring an action in his name as such comptroller, in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article.

Every person, firm, company, association or corporation who shall fail to keep such book of account or bills or memoranda of sale or transfer, or transfer ledger, register or stock certificate book or surrendered or canceled shares or certificates of stock as herein required, or who alters, cancels, obliterates or destroys any part of said records, or makes any false entry therein, or who shall refuse to permit the comptroller or any of his authorized representatives freely to examine any of said books, records or papers at any of the times herein provided, or who shall in any other respect violate any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than five hundred dollars nor more than five thousand dollars, or be imprisoned not less than three months nor more than two years, or both in the discretion of the court. (*Amended by L. 1910, ch. 453; L. 1911, ch. 352, and L. 1912, ch. 292, in effect May 1, 1912.*)

Books and records.—The fact that stock books of a New York corporation are kept at its place of business in the State of Rhode Island does not relieve the corporation from the duty imposed upon it by this section, and such corporation must keep the books and records required by said section. Rept. of Atty. Genl., Vol. 2, p. 674.

§ 277. **Civil penalties; how recovered.**—Any person, firm, company, association or corporation who shall violate any of the provisions of section two hundred and seventy or section two hundred and seventy-two of this chapter shall in addition to the penalties herein provided forfeit to the people of the state a civil penalty of ten dollars for each and every share of stock so sold or transferred, or transferred or entered upon the books of the corporation, as the case may be, without the payment of the tax by this article imposed thereon. Any person who shall violate any of the other provisions of this article shall in addition to the penalties hereinbefore provided forfeit to the people of the state of civil penalty of five hundred dollars for each and every such violation.

The state comptroller shall bring an action in his name as such comp-

* So in original.

troller in any court of competent jurisdiction for the recovery of any civil penalty; and all moneys collected by him shall be paid into the state treasury. In an action against a corporation or its transfer agent to recover a penalty because of its transfer of stock upon the books or records of the corporation without requiring the payment of the tax by this article imposed, the failure of the corporation or its transfer agent, on the demand of the comptroller or his duly authorized representative, to produce the surrendered certificate or memoranda of sale with the required stamps attached, shall constitute prima facie proof of the nonpayment of the tax imposed by section two hundred and seventy of this chapter. (*Amended by L. 1912, ch. 292, in effect May 1, 1912.*)

§ 278. Effect of failure to pay tax.

The effect of this section is not to impose upon the vendor who fails to pay the tax a forfeiture of his property, but simply denies to him the right to enforce the contract of sale, and hence the provision is not unconstitutional. *Sheridan v. Tucker* (1911), 145 App. Div. 145, 129 N. Y. Supp. 18.

The donee of corporate stock claiming title by gift *causa mortis* or *inter vivos* can prove such gift only in a case where the donor affixed the proper stamps to the certificates at the time of the gift and delivery thereof. *Matter of Raleigh* (1911), 75 Misc. 55.

Failure to pay tax must be pleaded as defense.—The statute does not provide that a person must pay this tax before he can make or bring an action to enforce a contract for the transfer of stock. Such payment is not made a condition precedent to the right to bring an action and plaintiff is not compelled to allege compliance, but the failure to pay the tax is matter to be pleaded as a defense. *Bean v. Flint* (1912), 204 N. Y. 153.

§ 280. Refund of tax erroneously paid.

Application.—The face value of stock transfer stamps should not be refunded to the Standard Oil Company, although such company has surrendered certificates of stock held by it to its various subsidiary corporations and has issued new certificates to those companies. Rept. of Atty. Genl., Mch. 7, 1912.

§ 290. Contents of petition; certiorari.

Certiorari to review an assessment.—Evidence examined, and held, that a judgment reducing the assessment on relator's real property based upon a finding that such property was assessed proportionately higher than other property of the same class should be reversed; that an assessment of \$35,000 upon a manufacturing plant erected at a cost of \$60,000, and practically new, was a fair one considering that it rented for \$20,000 a year. *It seems*, that the cost of such property in connection with the lease and other circumstances is entitled to more weight than mere opinions as to market value. *People ex rel. United Wood Alcohol Co. v. Sheldon* (1911), 148 App. Div. 400.

A petition, under this section, to review an assessment must state such facts as, if admitted by the return, would show that the relators were entitled to relief, and in the absence of such statement, a motion to dismiss the proceeding should be granted. *People ex rel. Sweet v. Blake* (1911), 72 Misc. 646, 132 N. Y. Supp. 191.

When no application to assessors necessary.—Where the property was added to the assessment roll after the first day of August, no application to the assessors to correct the assessment as required by this section is necessary before securing a writ of certiorari. *People ex rel. Suburban Investment Co. v. Miller* (1911), 73 Misc. 214, 131 N. Y. Supp. 868.

§ 293. Proceedings upon return.

An issue of fact essential to the determination of the issues is raised, where an allegation of the petition, that the application was made in due time to the proper officers to correct the assessment, is denied, by the return made by the defendants. *People ex rel. Sweet v. Blake* (1911), 72 Misc. 646, 132 N. Y. Supp. 191.

§ 301. Dismissal of suits or proceedings.

Inability to pay tax.—Where in an action against a corporation to recover a personal tax levied against it, it appears that it is insolvent so that it is unable to pay the tax, which was not assessed on information furnished by the corporation, it is entitled to an order dismissing the action by virtue of this section, providing for the dismissal of such action and the cancellation of the tax where the person assessed is unable to pay for want of property. *City of New York v. Chase, Talbot & Co.* (1911), 148 App. Div. 284.

§ 320. Laws repealed.

Repeal by implication.—The General Tax Law of 1909 repealed by implication the prior special laws relating to the taxation of the property of the city of New York lying outside its corporate limits. *People ex rel. City of New York v. Jansen* (1912), 75 Misc. 139.

§ 330. Definitions.

The intent of the law is to substitute this permissive tax for the existing tax upon bonds considered as personal property. While the statute defines the term "secured debts" as synonymous with the terms "bond, note, etc.," the tax is in fact imposed upon and the exemption afforded not to the bond, note or other evidence of the debt or obligation as such but to the debt or obligation which it evidences. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 684.

§ 331. Payment of tax on secured debt.

Tax on substituted bonds.—Where bonds, exempt under this article, are surrendered, and the bonds of other corporations, representing their debts are substituted in lieu thereof, the exemption earned by payment of the tax on the first mentioned bonds is not extended and applied to those substituted. *Rept. of Atty. Genl.*, Feb. 29, 1912.

When a bond of large denomination, upon which the tax has been duly paid, is surrendered and re-issued in bonds of smaller denomination, or vice versa, or where coupon bonds are converted into registered bonds, the exemption provided by the statute attaches alike to the latter and the Comptroller is authorized to adopt such rules and regulations, not inconsistent with the statute, as are necessary to evidence such exemption. So, also, where stamps are attached to the receipt instead of to the bond, the Comptroller may, when requested so to do by the owner or holder of the bonds, attach stamps or other evidence of the exemption to the bonds. *Rept. of Atty. Genl.* (1911), Vol. 2, p. 684.

TENEMENT HOUSE LAW.

(L. 1909, ch. 99.)

§ 2. **Definitions.**—*Subdivision 1, amended by L. 1912, ch. 13, in effect Mch. 5, 1912, as follows:*

1. A "tenement house" is any house or building, or portion thereof, which is either rented, leased, let or hired out, to be occupied, or is occupied, in whole or in part, as the home or residence of three families or more living independently of each other, and doing their cooking upon the premises, and includes apartment houses, flat houses and all other houses so occupied.

L. 1912, ch. 13, § 2.—All acts and parts of acts and all ordinances and parts of ordinances inconsistent with this act are hereby repealed.

What constitutes tenement house.—In an action against the owner of a tenement house to recover for the death of a tenant caused by the alleged negligence of the defendant in failing to light the public hallways and the second floor of the building as required by section 76 of the Tenement House Law, the defendant cannot on appeal sustain the judgment entered on a nonsuit upon the ground that the plaintiff failed to prove that tenants cooked in their apartments so as to make the building a tenement house within the provisions of the statute if no such point was made at trial. *Bornstein v. Faden* (1912), 149 App. Div. 37.

Subdivisions 4 and 12 amended by L. 1912, ch. 454, in effect Apr. 18, 1912, as follows:

4. A "shaft" includes exterior and interior shafts, whether for air, light, elevator, dumbwaiter, or any other purpose.

12. The "height" of a tenement house is the perpendicular distance measured in a straight line from the curb level to the underside of the roof beams, the measurements in all cases to be taken through the center of the façade of the house. Where a building is on a lot that faces on two or more streets and there is more than one grade or level, the measurements shall be taken through the center of the façade on the street having the greatest grade.

§ 3. **Buildings converted or altered.**—A building not a tenement house, if hereafter converted or altered to such use, shall thereupon become subject to all the provisions of this chapter affecting tenement houses hereafter erected. (*Amended by L. 1909, ch. 354 and L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 16. **Fire-escapes.**—*Subdivision 1, amended by L. 1912, ch. 454, in effect Apr. 18, 1912, as follows:*

1. Every non-fireproof tenement house hereafter erected, unless provided with fireproof outside stairways directly accessible to each apartment, shall have fire-escapes located and constructed as in this subdivision required, except that tenement houses that are less than four stories in

height and which also do not contain accommodations for more than four families in all, may be equipped with such other iron, steel, or wire cable fire-escapes as may be approved by the department charged with the enforcement of this chapter. Such escapes must be capable of sustaining two thousand pounds, and be of sufficient length to reach from the top floor to the ground, and with rungs not more than twelve inches apart and not less than fifteen inches in length. All fire-escapes shall open directly from at least one room or private hall in each apartment at each story above the ground floor, other than a bathroom or water-closet compartment, and shall not include the window of a stair hall, and such room or private hall shall be an integral part of said apartment and accessible to every room thereof without passing through a public hall. Access to fire-escapes shall not be obstructed in any way. No fire-escape shall be placed in a court except where required by law for apartments not having a room either on the street or yard as provided in section fifty-six of this chapter. Fire-escapes may be located in an unenclosed recess in the front of a tenement house hereafter erected, provided that such recess is used solely for fire-escape purposes and does not exceed five feet in depth from the extreme front wall of the building and has not less than seventy-five per centum of its superficial area open to the street and is not roofed over or enclosed at the top. Such recess shall not be counted as part of the unoccupied area of the lot, nor construed as a court. Fire-escapes may project into the public highway to a distance not greater than four feet beyond the building line. All fire-escapes shall consist of outside open iron or stone balconies and stairways. All balconies shall be not less than three feet in width and shall include at least one window or outside door of each apartment, at each story above the ground floor. All stairways shall be placed at an angle of not more than sixty degrees, with flat open steps not less than six inches in width and twenty inches in length and with a rise of not more than nine inches. The openings for stairways in all balconies shall be not less than twenty-one by twenty-eight inches, and shall have no covers of any kind. The balcony on the top floor, except in the case of a balcony on the street, shall be provided with a stairs or with a goose-neck ladder leading from said balcony to and above the roof and properly fastened thereto. A drop ladder shall be provided from the lowest balcony of sufficient length to reach to a safe landing place beneath. All fire-escapes shall be constructed and erected to safely sustain in all their parts a safe load, and if of iron shall receive not less than two coats of good paint, one in the shop and one after erection. In addition to the foregoing requirements, all fire-escapes hereafter erected upon tenement houses shall be constructed in accordance with such supplementary regulations as may be adopted by the department charged with the enforcement of this chapter. (*Subd. amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

Failure to guard fire escapes.—In an action against the owner of a tenement to

recover for the death of plaintiff's intestate, who fell through an opening in the fire escape while hanging out clothes on a clothes dryer attached to the rear wall of the tenement, it is necessary to plead and prove facts showing that defendant owed plaintiff's intestate some duty with respect to the maintenance of the clothes dryer and fire escape. It seems, that negligence could not be predicated upon defendant's failure to guard the opening in the fire escape but that the attachment of the clothes dryer to the wall so that one using it might fall through the opening in the fire escape might be either itself negligence or present a situation calling on defendant to exercise care to prevent an accident. *Fairchild v. Leo* (1912), 149 App. Div. 31.

§ 18. **Stairs and public halls.**—In every tenement house hereafter erected all stair halls shall extend from the entrance floor to the roof, and the stairs and public halls therein shall each be at least three feet wide in the clear. Each apartment shall be directly accessible at each story to such stairs and public halls, and every story of such apartment shall be so accessible to such stairs and public halls or to a tower fire-escape or stairway as provided in section twenty-two-a of this chapter. In every tenement house hereafter erected all stairs and stair halls shall be completely separated from every other stairs and from each elevator, by brick walls or partitions of terra cotta blocks not less than four inches thick and with fireproof self-closing doors at all openings. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 21. **Stairways and stairs.**—Each flight of stairs mentioned in the last three sections shall have an entrance on the entrance floor from the street or street court, or from an inner court which connects directly with the street. All stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches wide and not less than three feet long in the clear. Winding stairs will not be permitted except in a fireproof tenement house provided with a power passenger elevator. Where winding stairs or radial steps are used, the strings from which the risers radiate shall be curved on a circle of not less than one foot diameter and the treads shall be not less than four inches wide at the said string, the nosing not to be included; and the angle formed by the face of the riser and said string shall not diverge more than forty degrees from a line normal to the string at the intersection of such riser. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 22. **Stair halls.**—1. The stair halls in all non-fireproof as well as fireproof tenement houses hereafter erected shall be constructed as in this section and the following section specified. In tenement houses hereafter erected which either are occupied or are arranged to be occupied by more than two families on any floor, or which exceed four stories and cellar in height, the stair halls shall be constructed of fireproof material throughout. There shall be no wood or other inflammable material of any kind in such halls, except that hand rails of hard wood and hard wood treads not less than two inches thick may be provided. All windows on stair halls shall in

addition to being fireproof be glazed with good quality wire glass. The risers, strings and banisters shall be of metal or stone. The treads shall be of metal, slate or stone, or of hard wood not less than two inches thick. Hand rails to stairs shall be provided and, if wooden, shall be constructed of hard wood. The floors of all such stair halls shall be constructed of iron or steel beams and fireproof filling, and no wooden flooring or sleepers shall be permitted. In tenement houses hereafter erected which do not exceed four stories and cellar in height and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls shall either be constructed of iron beams and fireproof filling, or shall be filled in between the floor beams with at least five inches of cement deafening. In such houses the stairs shall be iron or stone, or may be of wood, provided the soffits are covered with metal lath and plastered with two coats of mortar, or with good quality plaster-boards not less than one-half inch in thickness, made of plaster and strong fibre and all joints made true and well-pointed.

2. In every non-fireproof tenement house hereafter erected which either is occupied or is arranged to be occupied by more than two families on any floor, or which exceeds four stories and cellar in height, all stair halls shall be inclosed on all sides with brick walls, except that one or more sides may be left open to the street, yard or court. In every tenement house hereafter erected, both fireproof and non-fireproof, the doors opening from the stair halls shall be fireproof and self-closing. There shall be no transom or sash or similar opening of any kind from such stair hall to any other part of the house. Each stair hall shall be shut off from all non-fireproof portions of the public halls and from all other non-fireproof parts of the building, on each story, by self-closing fireproof doors. In every tenement house hereafter erected every public hall which exceeds forty feet in length and which is also used or intended to be used as a means of egress from more than three apartments shall be constructed fireproof throughout and all doors opening from such hall shall be fireproof and self-closing. In tenement houses hereafter erected which do not exceed four stories and cellar in height, and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls shall be inclosed on all sides with brick walls or with partitions of angle iron and fireproof blocks not less than four inches thick; in tenement houses hereafter erected which do not exceed three stories and cellar in height, and which also are not occupied or arranged to be occupied by more than two families on any floor, the stair halls may be inclosed with wooden stud partitions, provided such partitions are covered on both sides with metal lath, or with good quality plaster-boards not less than one-half inch in thickness, made of plaster and strong fibre and all joints made true and well-pointed, and provided that the space between the studs is filled in with brick to the height of the floor beams. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§§ 22-a, 25, 27, 28, 30.

Partitions; fire stops.

L. 1912, ch. 454.

§ 22-a. **Tower fire-escapes.**—In a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated, tower fire-escapes or stairways which are supplemental to the stairways required by law, may be built and need not comply with the provisions of sections twenty, sixty-six, sixty-seven and sixty-eight of this chapter. Such tower fire-escapes or stairways shall be shut off from all other parts of the building by brick walls or by partitions of terra cotta blocks not less than four inches thick, and with fireproof self-closing doors at all openings, and shall be constructed in accordance with such supplementary regulations as may be adopted by the department charged with the enforcement of this chapter. Such tower fire-escapes or stairways shall not be designed for or used as service stairs; they shall be kept adequately lighted at all times and free from incumbrance. (*Added by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 25. **Partitions.**—In all non-fireproof tenement houses hereafter erected, apartment stud partitions which rest directly over each other shall run through the wooden floor beams and rest upon the plate of the partition below, and shall have the studding filled in solid between the uprights to the depth of the floor beams with suitable incombustible materials. In all fireproof tenement houses hereafter erected, all partitions shall rest directly upon the fireproof floor construction, and extend to the fireproof beam filling above. Apartment partitions within the meaning of this section are partitions crossing the floor beams at any angle, and designed to separate apartment from apartment, or any part of an apartment from the public hall or other public part of the building. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 27. **Cellar and basement stairs in fireproof buildings.**—In fireproof tenement houses hereafter erected cellar and basement stairs may be located inside the building but shall not be located underneath the stairs leading to the upper stories, but this prohibition shall not apply where the basement is the main entrance floor of the house. All such inside stairs shall be entirely inclosed with brick walls or with partitions constructed of fireproof blocks not less than four inches thick with angle iron construction and shall be provided with self-closing fireproof doors at all openings. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 28. **Closet under first story stairs.**—In non-fireproof tenement houses hereafter erected no closet of any kind shall be constructed under any staircase leading from the entrance story to the upper stories, but such space shall be left entirely open and kept clear and free from incumbrance. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 30. **Fire stops.**—In tenement houses hereafter erected, in all walls where wooden furring is used all the courses of brick from the under side of the floor beams to the top of the same shall project a distance of at

L. 1912, ch. 454.

Shafts; plastering.

§§ 33, 36, 37.

least two inches beyond the inside face of the wall so as to provide an effective fire stop; and wherever floor beams run parallel to a wall and wooden furring is used such beams shall always be kept at least two and one-half inches away from the inside line of the wall, and the space between the beams and the wall shall be built up solidly with brick work from the under side of the floor beams to the top of the same, so as to form an effective fire stop. All windows in walls situated on the lot line, except those facing on the street, shall be entirely fireproof with kalamein or metal frame and good quality wire-glass. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 33. Certain alterations and buildings moved from one lot to another.—If any tenement house existing on April eleventh, nineteen hundred and one, shall be so altered as to increase the number of rooms therein by thirty-three and one-third per centum or more, or if such building is increased in height so that the said building is more than four stories or parts of stories above the curb level, and also the number of rooms is increased therein, the entire stair halls, entrance halls and other public halls of the whole building shall be made to conform to the requirements of sections eighteen to twenty-three, inclusive, of this chapter. If any tenement house erected prior to April tenth, nineteen hundred and one, be hereafter moved from one lot to another, it shall thereupon become subject to all the requirements of this chapter affecting tenement houses hereafter erected. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 36. Shafts.—All shafts hereafter constructed in tenement houses shall be constructed fireproof throughout, with fireproof self-closing doors at all openings, at each story, except window openings in shafts; and, if they extend to the cellar, shall also be inclosed in the cellar with fireproof walls and fireproof self-closing doors at all openings. In no case shall any shaft be constructed of materials in which any inflammable material or substance enters into any of the component parts. But nothing in this section contained shall be so construed as to require such inclosures about dumb-waiters in the well hole of stairs where the stairs themselves are inclosed in brick or stone walls, and are entirely constructed of fireproof materials as hereinbefore provided. Self-closing doors shall not be required for elevators. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 37. Plastering behind wainscoting.—When the surface of walls, partitions or ceilings of any tenement house, or any building in process of alteration into a tenement house, is to be covered, sheathed or wainscoted wholly or in part, the wall, partition or ceiling, behind such covering shall first be plastered; and any intervening space between said plastering and said wainscot, sheathing or covering shall be filled in solid with incombustible material. In the case of walls and partitions, such plastering and filling shall extend down to the floor line. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 38. **Wooden buildings on same lot with a tenement house.**—Within the fire limits no wooden building of any kind whatsoever shall hereafter be placed or built upon the same lot with a tenement house, nor shall a tenement house be placed or built upon the same lot with a wooden building. And, within the fire limits, no wooden tenement house, and no wooden structure or other building on the same lot with a tenement house, shall hereafter be enlarged, extended or raised; except that a wooden extension not exceeding in total area seventy square feet may be added to an existing wooden tenement house, provided such extension is used solely for bathrooms or water-closets. Nothing in this section shall be construed so as to prevent the erection of an extension to a wooden building, within the fire limits, if such extension is constructed with walls of brick, stone, iron or other hard, incombustible material, provided that the top of the roof beams of such extension shall not be above the level of the second tier of beams, and further provided that such extension shall not be occupied or arranged to be occupied for living purposes. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 51. **Height.**—The height of no tenement house hereafter erected shall by more than one-half exceed the width of the widest street upon which it stands. Such height shall be the perpendicular distance measured in a straight line from the curb level to the underside of the roof beams; provided that if the cornice exceeds one-tenth of such height, the measurements shall be taken to the top of the cornice; and provided that if there are bulkheads, superstructures or pent houses, exceeding ten feet in height or exceeding in aggregate area ten per centum of the area of the roof, the measurements shall be taken to the top of such bulkhead, superstructure or pent house; but this shall not apply to elevator inclosures not exceeding twenty-three feet in height, and used solely for elevator purposes, nor to open pergolas or similar open ornamental treatment of roof-gardens or play-grounds. The measurements in all cases shall be taken through the center of the façade of the house. In a fireproof tenement house hereafter erected in which one, or more power passenger elevators are provided and operated, pent houses may be erected on the main roof, but such pent houses including all bulkheads shall not cover more than fifty per centum of the area of such roof. Such pent houses shall not be used or rented as apartments, but their use shall be limited solely to laundry and store room purposes, and to servants' and janitor's quarters. Such pent houses shall be set back at least ten feet from both the front and rear walls of the building, and at least three feet from any court wall; they shall have a clear inside height of not less than nine feet from finished floor to finished ceiling, and shall not exceed twelve feet in height from the high point of the main roof to the highest point of the pent house roof. Such pent houses shall not be deemed as affecting the measurement of height of the building as described in the first part of this section, nor for the purposes

L. 1912, ch. 454.

Yard spaces.

§§ 52, 55.

of sections fifty-three, fifty-seven, fifty-eight and fifty-nine of this chapter. All such pent houses shall be entirely fireproof, with floors of brick, stone, cement, iron, or other hard incombustible material, with windows, doors and trim of kalamein or hollow metal and all glass to be good quality wire-glass.

No tenement house shall be increased in height so that the building shall exceed by more than one-half the width of the widest street on which it stands. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 52. **Yards.**—Behind every tenement house hereafter erected there shall be a yard extending across the entire width of the lot, and except upon a corner lot, at every point open from the ground to the sky unobstructed, except that fire-escapes or uninclosed outside stairs may project not over four feet from the rear line of the house, and except that one open slat fire-escape bridge or platform not exceeding four feet in width may extend across above the yard, from the roof of one tenement house to the roof of an adjoining or abutting building to furnish roof egress. The depth of said yard, measured from the extreme rear wall of the house to the rear line of the lot, shall be as set forth in the two following sections. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 55. **Yard spaces of lots running through from street to street.**—Wherever a tenement house hereafter erected is upon a lot which runs through from one street to another street, and said lot is not less than seventy feet nor more than one hundred and five feet in depth, there shall be a yard space through the center of the lot midway between the two streets, which space shall extend across the full width of the lot and shall never be less than twelve feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-three of this chapter. But where such building has no basement and the cellar ceiling is not more than two feet above the curb level, such yard space may start at the level of the second tier of beams. Where such lot is over one hundred and five feet in depth such yard space shall be left through the center of the lot midway between the two streets, and shall extend across the entire width of the lot, and shall not be less than twenty-four feet in depth from wall to wall, and shall be increased in depth as prescribed in section fifty-three of this chapter. In a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated, where such tenement house runs through from one street to another street, the two portions of the building may be connected and the yard between such portions built upon, but not above the level of the second tier of beams, nor so as to convert any unoccupied portion of such yard into a court less in size than the minimum sizes prescribed by sections fifty-eight and fifty-nine of this chapter. Where a single tenement house hereafter erected runs through from one street to another street and also occupies the entire block, no yard need be provided. Where a single tenement house hereafter erected

is situated on a lot formed by the intersection of two streets at an acute angle, the yard of the said house need not extend across the entire width of the lot, provided that it extends to a point in line with the middle line of the block. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 57. **Outer courts.**—*Subdivision 1, amended by L. 1912, ch. 454, in effect Apr. 18, 1912, as follows:*

1. Where one side of an outer court is situated on the lot line, the width of the said court, measured from the lot line to the opposite wall of the building, for tenement houses sixty feet in height shall not be less than six feet in any part; and for every twelve feet of increase or fraction thereof in height of the said building, such width shall be increased six inches throughout the entire height of said court; and for every twelve feet of decrease in the height of the said building below sixty feet, such width may be decreased six inches. Wherever an outer court exceeds sixty-five feet in length and does not extend from the street to the yard, the entire court shall be increased in width one foot for every additional thirty feet or fraction thereof in excess of sixty-five feet. But such measurement shall not prohibit one offset, the length of which does not exceed its width. Except that in tenement houses hereafter erected not exceeding four stories and cellar in height and which also are not occupied or arranged to be occupied by more than eight families in all, or by more than two families on any floor, and in which also each apartment extends through from the street to the yard, the width of an outer court situated on the lot line shall not be less than four feet in any part provided that the length of such outer court does not exceed thirty-six feet. (*Subd. amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 59. **Outer and inner courts.**—Nothing contained in the foregoing sections concerning outer and inner courts shall be construed as preventing the cutting off of the corners of said courts, provided that the running length of the wall at the angle of the court does not exceed six feet. Except that in outer or inner courts of a less size than the minimum prescribed for tenement houses sixty feet in height, the running length of the wall containing windows in the angles of said courts, shall not exceed four feet. Nothing in this section contained shall be construed so as to permit the reduction of any inner court by cutting off the corners thereof when such court is less than eight feet in width, measured from the lot line to the opposite wall of the building. In construing said sections the height of the building is to be measured from the curb level to the top of the highest wall inclosing or forming such court. When a tenement house hereafter erected exceeding three stories in height has no basement and the cellar ceiling is not more than two feet above the curb level, the courts mentioned in the three preceding sections may start at the level of the second tier of beams. Where an inner court starts at the second tier of

L. 1912, ch. 454.

Rooms; windows.

§§ 62, 63.

beams, unless the bottom of the court is at that level and an intake is there provided as prescribed by section fifty-eight, subdivision three, of this chapter, a portion of such court shall be left unbuilt upon, and shall communicate directly with the intake required by section fifty-eight, subdivision three, of this chapter. Where one side of such court is situated on the lot line, the unbuilt upon portion shall have a minimum width and length equal to the minimum width of the court; where such court is not situated upon the lot line, the unbuilt upon portion shall have one dimension equal to the minimum width of the court and the other dimension shall be not less than one-half that width. Nothing in this section contained shall be construed so as to permit any room without a window opening on the street or yard or on a court in every part of the dimensions prescribed in the foregoing sections. Where a court starts at the level of the second tier of beams in whole or in part, and the bottom of said court is a skylight over a store or hall, proper access to the top of said skylight shall be provided, and said skylight shall be so arranged as to be easily cleaned. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 62. **Rooms, lighting and ventilation of.**—In every tenement house hereafter erected every room, including water-closet compartments and bath-rooms, shall have at least one window opening directly upon the street or upon a yard or court of the dimensions specified in sections fifty-two to sixty of this chapter, and such window shall be so located as to properly light all portions of such rooms. In addition to the above requirement, in tenement houses hereafter erected no apartment of three rooms or less shall extend in depth from the street or yard, as the case may be, for a greater distance than eighteen feet without the intervention of an inner or outer court adjoining said room, constructed as required by this chapter. Whenever a room in a tenement house hereafter erected opens upon an inner court less than ten feet wide, measured from the lot line to the opposite wall of the building, such room shall be provided with a sash window, communicating with another room in the same apartment, such window to contain not less than ten square feet of glazed surface, and to be made so as to readily open. No tenement house shall be so altered that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the department charged with the enforcement of this chapter. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 63. **Windows in rooms.**—In every tenement house hereafter erected the total window area in each room, except water-closet compartments and bath-rooms, shall be at least one-tenth of the superficial area of the room, and the top at least of one window shall not be less than seven feet six inches above the floor, and the upper half of it shall be made so as to open the full width. No such window shall be less than twelve square feet in area between the stop beads. Transoms or partition sash to private halls or to adjoining rooms shall be provided to secure through ventilation,

§§ 64, 66.

Rooms; public halls.

L. 1912, ch. 454.

when required by the department charged with the enforcement of this chapter, but no such transom or such window shall be required in rooms containing two windows if each window contains twelve square feet of area between stop-heads, or in the case of a mullioned window containing twenty-four square feet. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 64. Rooms, size of.—In every tenement house hereafter erected all rooms, except water-closet compartments and bath-rooms, shall be of the following minimum sizes: In each apartment there shall be at least one room containing not less than one hundred and twenty square feet of floor area, and each other room shall contain at least seventy square feet of floor area. No room shall be less than nine feet high from the finished floor to the finished ceiling nor less than seven feet wide in its least horizontal dimension; except that in a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated servants' bed-rooms may be not less than six feet in their least horizontal dimension. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 66. Public halls.—In every tenement house hereafter erected, which is occupied or arranged to be occupied by more than two families on any floor or which exceeds four stories and cellar in height, every public hall shall have at least one window opening directly upon the street or upon a yard or court. Such window shall be at the end of said hall, with the natural direction of the light parallel to the axis of said hall; if the hall exceeds sixty feet in length there shall be one additional window in each additional thirty feet of hall or fraction thereof. If the window is not thus located at the end of the hall, there shall be at least one window opening directly upon the street or upon a yard or court in every twenty feet in length or fraction thereof of said hall; but the foregoing provisions shall not apply to that portion of the entrance hall between the entrance and the first flight of stairs, provided that the entrance door contains not less than five square feet of glazed surface. In every public hall in such tenement house recesses or returns the length of which does not exceed twice their width will be permitted without an additional window. But wherever the length of such recess or return exceeds twice its width the above provisions in reference to one window in every twenty feet of hallway shall be applied. Any part of a hall which is shut off from any other part of said hall by a door or doors shall be deemed a separate hall within the meaning of this section. In tenement houses hereafter erected which are not occupied or arranged to be occupied by more than two families on any floor and which also do not exceed four stories and cellar in height, in lieu of a window opening directly to the outer air as above provided, there shall be a stair-well not less than twelve inches wide extending from the entrance floor to the roof. In such last named tenement houses the entrance door shall contain not less than five square feet of glazed surface

L. 1912, ch. 454.

Elevators; light shafts.

§§ 66-a, 68, 70, 75.

and all doors leading from the public halls shall be provided with translucent glass panels of an area of not less than five square feet for each door, and also with fixed transoms of translucent glass over each door. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 66-a. **Elevator-vestibules.**—In a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated, elevator-vestibules not less than five feet in minimum dimension and not exceeding in any dimension twice the width of the elevator shafts which they serve, will be permitted without a window to the outer air as required by section sixty-six and sixty-seven, provided such elevator-vestibules are completely shut off by brick walls or partitions of terra cotta blocks not less than four inches thick from the public halls and stairs and from all other parts of the said house, and with fireproof self-closing doors at all openings except elevators; and provided further that such elevator-vestibules are ventilated to the outer air by means of vent-flues not less than twelve inches by twelve inches in size; and also provided that such elevator-vestibules are equipped with wires, pipes and fixtures for both gas and electric lighting, and are kept properly lighted by electric light. (*Added by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 68. **Windows for stair halls, size of.**—In every tenement house hereafter erected the aggregate area of windows to light or ventilate stair halls shall be at least eighteen square feet for each floor. There shall be provided for each story at least one of said windows, which shall be at least two and a half feet wide and five feet high, measured between the stop beads. On the top story a ventilating skylight will be accepted in lieu of a window for that story. A sash door shall be deemed the equivalent of a window in this section and sections sixty-six and sixty-seven of this chapter, provided that such door contains the amount of glazed surface prescribed for such windows. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 70. **Percentage of lot occupied.**—No tenement house shall hereafter be enlarged, or its lot be diminished, so that a greater percentage of the lot shall be occupied by buildings or structures than is provided in section fifty of this chapter; provided that the space occupied by fire-escapes of the size hereinbefore prescribed, and by chimneys or flues located in yards and attached to the houses and which do not exceed five square feet in area and do not obstruct light or ventilation, shall not be deemed a part of the lot occupied. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 75. **New light shafts in existing buildings.**—Any shaft used or intended to be used to light or ventilate rooms used or intended to be used for living purposes, and which may be hereafter placed in a tenement house, erected prior to April tenth, nineteen hundred and one, shall not be less in area

than twenty-five square feet, nor less than four feet in width in any part, and such shaft shall under no circumstances be roofed or covered over at the top with a roof or skylight; every such shaft shall be provided at the bottom with a horizontal intake or duct, of a size not less than four square feet, and communicating directly with the street or yard, and such duct shall be so arranged as to be easily cleaned out. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 76. Public halls.

Failure of the owner of a tenement house to provide lights on the entrance floor and the second floor as required by this section is evidence of negligence. *Schindler v. Welz & Zerweck* (1911), 145 App. Div. 532, 130 N. Y. Supp. 344.

Negligence; failure to light public hallways.—Where, in an action by a tenant of a tenement house in the city of New York owned and controlled by defendant to recover for personal injuries alleged to have been sustained through defendant's negligence in failing to keep and maintain a proper light in the hallways and on the entrance floor of the building as required by this section, it is apparent that the proximate cause of the accident was an apple skin on the stairway of which defendant had neither actual nor constructive notice, a motion for a new trial after a nonsuit, granted at the close of the plaintiff's case, will be denied. *Horn v. Breakstone* (1912), 75 Misc. 343.

It is not contributory negligence as a matter of law for a tenant to use the stairway of a tenement knowing that it is not lighted, because she has a right to use it. Where the evidence shows that a tenant while attempting to descend an unlighted stairway leading to the entrance of the tenement fell and was killed, her contributory negligence is a question for the jury. *Bornstein v. Faden* (1913), 149 App. Div. 37.

The Legislature, in requiring that a "proper light" be kept burning in a public hallway near the stairs upon the entrance floor of tenement houses, intended that the owner should provide illumination sufficient to light the entire lower stairway, so that persons using the stairs by the exercise of care could see the stairs and avoid stumbling or missing their foothold. Where it appears that no such light was provided during the hours required by the statute, the negligence of the landlord is a question of fact for the jury. *Bornstein v. Faden* (1912), 149 App. Div. 37.

§ 78. Chimneys and fireplaces.—In every tenement house there shall be adequate chimneys running through every floor with an open fireplace or grate, or place for a stove, properly connected with one of said flues or chimneys for every apartment. In tenement houses hereafter erected, such flues shall be constructed independently of each other, provided, however, that where gas stoves are to be used exclusively, independent flues may be omitted if a metal hood extending on all sides beyond, and located immediately over, the gas stove is provided and maintained, and the space within such hood connected by a proper opening to a ventilating flue. Under no circumstances shall a gas stove be directly connected with a flue that communicates with another apartment. (*Amended by L. 1912, chs. 168 and 454, in effect Apr. 5, 1912.*)

Note.—The amendments are identical.

§ 79. **Vent flues.**—In a fireproof tenement house hereafter erected in which one or more power passenger elevators are provided and operated, water-closets and bath-rooms which are supplementary to those required by law may be ventilated by individual vent flues extending from such closet or bath-room, independently of any other flue, to and above the roof. Such vent flues shall not be covered at the top but may be provided with a hood or louvres. Such vent flues shall not be located on or against an outside wall, they shall be constructed of terra cotta, finished with an even surface on the inside, and shall be not less than three square feet in area. Such water-closets and bath-rooms shall be equipped with pipes, wires and fixtures for gas or electric light and shall be kept properly lighted. No servant's water-closet or bath-room shall be so lighted or ventilated but shall have a window opening directly on the outer air, as required by sections sixty-two and ninety-three of this chapter. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 93. **Water-closet accommodations.**—In every tenement house hereafter erected there shall be a separate water-closet in a separate compartment within each apartment. Every water-closet and bath hereafter placed in any tenement house shall be placed in a compartment completely separated from every other water-closet and bath; such compartment shall be not less than two feet and four inches wide, and shall be inclosed with plastered partitions, which shall extend to the ceiling. In tenement houses erected after April tenth, nineteen hundred and one, such compartments shall have a window opening directly upon the street or yard, or upon a court of the dimensions specified in this chapter, except as otherwise provided in section seventy-nine. In tenement houses erected prior to April tenth, nineteen hundred and one, such compartment shall have a window opening directly upon the street, or upon a yard not less than four feet deep, or upon a court or shaft of not less than twenty-five square feet in area, open to the sky without roof or skylight. Every such window shall be at least one foot by three feet between stop-beads, and the entire window shall be made so as to readily open. When, however, such water-closet compartment is located on the top floor and is lighted and ventilated by a skylight over it, or is located at the bottom of a shaft or court of lawful size, and is lighted and ventilated by a skylight over it at the bottom of such shaft or court, no window shall be necessary, provided the roof of such skylight contains at least three square feet of glazed surface and is arranged so as to readily open. Nothing in this section in regard to the separation of water-closet compartments from each other shall apply to a general toilet room containing several water-closets hereafter placed in a tenement-house, provided such water-closets are supplemental to the water-closet accommodations required by law for the use of the tenants of the said house. Nothing in this section in regard to the ventilation of water-closet compartments shall apply to a water-closet hereafter placed in a

tenement house, where it is provided to replace a defective fixture in the same position and location. No water-closet shall be maintained in the cellar of any tenement house without a special permit in writing from the department charged with the enforcement of this chapter, which shall have power to make rules and regulations governing the maintenance of such closets. Every water-closet compartment hereafter placed in any tenement house shall be provided with proper means of lighting the same at night. If fixtures for gas or electricity are not provided in said compartment, then the door of said compartment shall be provided with translucent glass panels, or with a translucent glass transom, not less in area than four square feet. The floor of every such water-closet compartment shall be made water-proof with asphalt, tile, stone or some other water-proof material; and such water-proofing shall extend at least six inches above the floor so that the said floor can be washed or flushed out without leaking. No drip trays shall be permitted. No water-closet fixtures shall be inclosed with any woodwork. (*Amended by L. 1912, ch. 454, in effect Apr. 18, 1912.*)

§ 104. Cleanliness of buildings.

Refuse on stairs; notice to landlord.—Where in an action by the lessee of an apartment in a tenement house against her landlord to recover for personal injuries received owing to the fact, as alleged, that she slipped upon a grape-skin which had been left upon the stairway, it appears that the janitress employed by the defendant having seen boys eating grapes while coming down the back stairs at two o'clock in the afternoon found and picked up grape-skins on the main stairway, but it appears that after three o'clock on the same day a daughter of another tenant and a companion also threw grape-skins on the front stairs, it is error to permit the jury to find the defendant negligent because of the presence of the grape-skins on the theory of constructive notice, there being no evidence of actual notice to him or to his janitress as to the grape-skins thrown upon the stairs after three o'clock. *Maringer v. Hill* (1911), 146 App. Div. 720, 131 N. Y. Supp. 445.

TOWN LAW.

(L. 1909, ch. 63.)

§ 40. Town meeting.

Changing date of town meeting.—A Board of Supervisors has no power to so change the time of town meetings as to extend the terms of the supervisors in office at the time of the adoption of the resolution. Rept. of Atty. Genl., Feb. 15, 1912.

§ 43. Powers of town meeting.

A proposition to direct a sale and conveyance of town property may be passed upon at a special town meeting, provided it was not acted upon at the last preceding biennial town meeting. When, however, such a proposition is once submitted and passed upon at a town meeting, it may not be again submitted until the succeeding biennial meeting. Rept. of Atty. Genl., Jan. 31, 1912.

§ 53. Qualification of elector at town meeting.

A proposition for the sale and conveyance of town property can only be voted upon by taxpayers or the husbands of taxpayers. Rept. of Atty. Genl., Jan. 31, 1912.

§ 80. Town officers.

The board of town assessors is without authority to employ a clerk or other assistant and the town board has no power to authorize such employment. People ex rel. Anderson v. Snedeker (1911), 148 App. Div. 194.

§ 81. Eligibility of town officers.

The provision that no trustee of a school district shall be eligible to the office of supervisor of any town or ward in this state applies to the qualifications of the candidate to be voted for, as well as to his qualifications to fill the office. Rept. of Atty. Genl. (1911), Vol. 2, p. 673.

§ 82. Term of office.

Extension of term.—A Board of Supervisors has no power to so change the time of town meetings as to extend the terms of the supervisors in office at the time of the adoption of the resolution. Rept. of Atty. Genl., Feb. 15, 1912.

§ 85. Compensation of town officers.

The right of a supervisor to his statutory fees of one per centum on all moneys paid out by him as supervisor is as absolute as the right of a salaried official to his salary, the difference being that his compensation instead of being a fixed sum is uncertain. People ex rel. Acheson v. Bullard (1911), 146 App. Div. 282, 130 N. Y. Supp. 974.

Compensation while auditing accounts.—Members of the town board are entitled to no greater compensation while auditing accounts than while performing other duties as a town board, such compensation being two dollars per day. Rept. of Atty. Genl. (1911), Vol. 2, p. 663.

§ 89. Penalty for setting fire to waste or forest lands.—(*Amended by L. 1909, ch. 491 and L. 1910, ch. 630, and repealed by L. 1912, ch. 371, in effect Apr. 15, 1912.*)

§§ 92-a, 98, 100, 106.

Town clerks; supervisors.

L. 1912, chs. 136, 371.

§ 92-a. Town clerks' undertakings.—Every town clerk hereafter elected or appointed shall, within thirty days after entering upon the duties of his office, make and deliver to the supervisor of the town his undertaking, with such sureties as the town board shall prescribe, in a penal sum not exceeding one thousand dollars, to be determined by the town board, to the effect that he will well and faithfully discharge his official duties as such town clerk, and that he will well and truly keep, pay over and account to the proper board, officer or commission of the town, state or county, and account for, all moneys and property going into his hands in his official capacity; and such undertaking shall, after its execution, be presented by the supervisor to the town board for their approval as to its form and the sufficiency of the sureties thereon. Until such undertaking shall have been approved, none of the moneys, books, documents, papers or property of the town, county or state shall be turned over or delivered to such town clerk elect. After the approval of such undertaking, the supervisor shall file the same in the office of the county clerk. (*Added by L. 1912, ch. 136, in effect Apr. 4, 1912.*)

§ 98. General duties of supervisor.—*Subdivision 8, as added by L. 1910, ch. 630, amended by L. 1912, ch. 371, in effect Apr. 15, 1912, as follows:*

8. In towns other than those mentioned in section ninety-seven of the conservation law, the supervisor shall, by virtue of his office, be superintendent of fires of his town and charged with the duty of preventing and extinguishing forest fires. He shall have power to employ persons to act as forest rangers in preventing and fighting fires and to employ necessary assistants therefor, and shall possess all the power and authority conferred upon the conservation commission, district forest ranger, forest ranger and fire warden under sections ninety-two and ninety-three of the conservation law. Any person summoned to fight forest fires who is physically able and refuses to assist shall be liable to a penalty of twenty dollars. The town board of each town shall at its first annual meeting designate one of its members to act as such superintendent of fires for the ensuing year in case of absence of the supervisor. The town board shall fix the compensation of all forest rangers and assistants employed under the provisions of this section and all expenses incurred under the provisions of this section shall be a charge upon and paid by the town. (*Added by L. 1910, ch. 630 and amended by L. 1912, ch. 371, in effect Apr. 15, 1912.*)

§ 100. Supervisor's undertaking.

Liability of sureties.—Sureties on the general bond of a supervisor will not be held liable for defaults covered by a special bond which was not given. *Town of Whitestown v. Title Guaranty & Surety Co. (1911), 72 Misc. 498, 131 N. Y. Supp. 390.*

§ 106. Justice's undertaking and oath.

Failure of a justice of the peace to file oath of office with the county clerk within the time prescribed by law does not render the office vacant, nor prevent such

person from acting as justice of the peace, and the county clerk may receive—and file such official oath after the time prescribed for filing it. While such failure to file the oath of office may be a ground for declaring the forfeiture of the office it does not render the office vacant. Rept. of Atty. Genl. (1911), Vol. 2, p. 596.

It is the duty of a county clerk to file papers, as in cases where usually required by law, executed or certified by a person duly elected a justice of the peace even though such person has not filed his bond or undertaking. It is also the duty of the county clerk to issue a certificate, in such cases as is usually required, certifying that said person is a justice of the peace. The county clerk need not certify that said person is a "Justice of the Peace, duly qualified." Rept. of Atty. Genl., Feb. 8, 1912.

§ 112. **Overseers of the poor.**—The electors of each town may, at their biennial town meeting, determine by resolution whether they will elect one or two overseers of the poor, and the number so determined upon shall be thereafter biennially elected for a term of two years. Whenever any town shall have determined upon having two overseers of the poor, the electors thereof may determine by resolution at a biennial town meeting, to thereafter have but one, and if they so determine thereafter no other overseer shall be elected or appointed, until the term of the overseer continuing in office at the time of adopting the resolution shall expire or become vacant, and the overseer in office may continue to act until his term shall expire or become vacant. The electors of any town may, at any biennial or regularly called special town meeting, on the application of at least twenty-five resident taxpayers whose names appear upon the then last preceding town assessment-roll, adopt by ballot a resolution that there shall be appointed in and for such town one overseer of the poor. If a majority of the ballots so cast shall be in favor of appointing an overseer of the poor, no overseer of the poor shall thereafter be elected in such town except as hereinafter provided, and the overseers of the poor of such town elected at the town meeting at which such resolution is adopted or who shall then be in office shall continue to hold office for the terms for which they were respectively chosen; and within thirty days before the expiration of the term of office of such elected overseer whose term expires latest, the town board of such town shall meet and appoint one overseer of the poor for such town, who shall hold office for one year from the first day of May next after his appointment; and annually in the month of April in each year thereafter an overseer of the poor shall be appointed by the town board of such town for the term of one year from the first day of May next following such month of April. Each overseer of the poor so appointed shall execute and file with the town clerk an official undertaking in such form and for such sum as the town board may by resolution require and approve. An overseer of the poor, so appointed, shall not hold any other town office during the term for which he is so appointed, and if he shall accept an election or appointment to any other town office he shall immediately cease to be an overseer of the poor. If a

vacancy shall occur in the office of an overseer of the poor, so appointed, such vacancy shall be filled by the town board, by appointment, for the balance of the unexpired term. The compensation of an overseer of the poor so appointed, shall be fixed by the town board of such town, but shall not exceed, in any one year, the sum of one thousand dollars, and shall be a town charge. At any subsequent town meeting after the expiration of three years from the adoption of a resolution by any town to appoint an overseer of the poor, the electors of the town may determine by ballot to thereafter elect one or more overseers of the poor, and if they determine so to elect, then at the next biennial town meeting thereafter one or more overseers of the poor shall be elected in pursuance of the laws regulating the election of overseers of the poor, and the term or terms of the overseer or overseers first so elected shall commence upon the expiration of the term of office of the overseer of the poor last theretofore appointed in pursuance of law, and shall expire as though each such term commenced at the time of election; and their successors shall thereafter be elected in pursuance of law.

In each town having a population of twenty thousand or over, the town board may fix the compensation of overseers of the poor at not to exceed twelve hundred dollars per year, and which shall be a town charge.

The compensation so fixed shall be taken and accepted by such overseer of the poor in lieu of any per diem or fees from the town from the time such salary shall go into effect. (*Amended by L. 1912, ch. 203, in effect Apr. 8, 1912.*)

§ 136-a. Additional appropriations for Memorial day upon the adoption of a proposition therefor.—Upon the adoption of a proposition therefor, by the qualified electors of the town entitled to vote thereon, as hereinafter provided, the town board of any town may appropriate from town funds a sum not exceeding the amount which it is authorized by the provisions of this section to raise by tax for the purpose of defraying the expenses of the proper observance of Memorial or Decoration day, in addition to any moneys which such town board is authorized to provide for by section one hundred and thirty-six of this chapter. A proposition directing the appropriation of town moneys for the additional expenses of the proper observance of Memorial or Decoration day, under the provisions of this section may be submitted to the electors of the town qualified to vote thereon at a biennial or special town meeting in the manner provided in this chapter for the submission of propositions for raising or appropriating money, except that no such proposition shall be submitted unless at least ten per centum of the qualified voters of the town unite in a written application therefor addressed to the town clerk. Such proposition shall be deemed adopted if it receive the affirmative vote of a majority of the qualified electors voting thereon. Moneys appropriated for the purposes of this section shall be raised by taxation in the same manner

L. 1912, ch. 258.

Town board; town auditors.

§§ 141, 153, 154.

as other town expenses, but shall not exceed in any one year a sum equal to twenty-five thousandths of a mill on each dollar of the assessed valuation of property in the town according to the assessment-roll last preceding the date of submission of the proposition. A proposition adopted as aforesaid shall continue in force until rescinded by a proposition submitted and adopted in like manner, but not more than one such proposition either directing the appropriation or rescinding a former proposition shall be adopted in any one year. Moneys appropriated under the provisions of this section shall be kept separate and apart from those provided for in section one hundred and thirty-six of this chapter and shall be expended under the direction of the town board. (*Added by L. 1912, ch. 185, in effect Apr. 4, 1912.*)

§ 141. **Power of town board, in certain towns, to borrow money for the purpose of paying charges, claims or demands against the town.**—Whenever a town board or board of town auditors of any town, having a population of four thousand and upwards, shall have audited any account, and shall have allowed in whole or in part any charge, claim or demand against such town, and shall have made and filed a certificate to that effect in the office of the town clerk, and such account shall thereby have become a legal obligation and charge against such town, the town board, in anticipation of the taxes for the current fiscal year, shall have power to borrow upon the faith and credit of the town a sum of money sufficient to pay the aggregate amount of the accounts so audited and allowed at any one of the regular meetings held for that purpose, by issuing a temporary certificate or temporary certificates of indebtedness therefor, bearing interest and payable at such date or dates as may be fixed by such town board, but not for a longer period than eight months; and the proceeds of such loan shall be placed to the credit of the public officers charged by law with the payment of town claims. (*Added by L. 1912, ch. 258, in effect Apr. 11, 1912.*)

§ 153. **Powers of town auditors.**

Appeal by claimant.—After a board of town auditors has judicially passed upon the merits of a claim and disallowed it the claimant's only remedy is by an appeal, in some cases to the Board of Supervisors, and in others by certiorari to the Appellate Division of the Supreme Court. The Supreme Court at Special Term is without power to review the action of the board of town auditors in disallowing a claim upon the ground that it was not a legal charge. *People ex rel. Anderson v. Snedeker* (1912), 75 Misc. 194.

§ 154. **Meetings and compensation of town auditors.**—The board of town auditors, or town board where no regular town board of audit has been chosen, in a town having a population of four thousand and upwards, may meet quarterly in each year on the first Mondays of February, May, August and November for the purpose of auditing, allowing or rejecting all charges, claims and demands against the town. Each town auditor shall be entitled

to receive for his services three dollars for each day, not exceeding in the aggregate twelve days in any one year, except in towns having a population of twelve thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services three dollars for each day, but not to exceed thirty days in any one year and except that in towns having a population of twenty thousand and upwards, in which towns each of such town auditors shall be entitled to receive for his services three dollars for each day, but not to exceed sixty days in any one year, actually and necessarily devoted by him to the service of the town in the duties of said office. (*Amended by L. 1910, ch. 24, and L. 1912, ch. 72, in effect Mch. 26, 1912 and L. 1912, ch. 258, in effect Apr. 11, 1912.*)

Application.—The board of town auditors, in towns having such a board, is separate and distinct from the town board, and the provision making the compensation of its members three dollars per day has no application to the town board. *Rept. of Atty. Genl., Vol. 2, p. 663.*

§ 170. Town charges generally.

Statutory percentage of supervisor on moneys paid out.—A town board will be required to audit the claims of a supervisor for his statutory percentage on moneys paid out, where he alleges in his petition for a writ of certiorari that he has paid the amounts upon which percentages are claimed, where the return, while not specifically denying that the payments were made, merely alleges that the supervisor made fraudulent charges against the town, that he converted money to his own use, that he did not keep accurate and honest accounts, etc., and sets out specific instances of dereliction. This because, although such charges may furnish ground for removing the supervisor from office, or may be a basis for a civil or criminal action against him, he is entitled to his day in court. The town board has no power to pass upon his guilt or innocence, but must award him the emoluments legally affixed to his office. *People ex rel. Acheson v. Bullard (1911), 146 App. Div. 282, 130 N. Y. Supp. 974.*

Payment of bridge-tenders to operate a lift bridge over the Erie Canal is not a town charge. *Matter of Town of Ridgway v. Freman (1911), 72 Misc. 452, 129 N. Y. Supp. 1081.*

§ 230-a. Town board may direct construction of portions of sewer system; extension, notice of, petition.—If in the petition for the establishment of a sewer district or for an extension to an existing district, the petitioners shall pray that a portion or portions only of the system designed ultimately to serve the entire district or an extension to the said district, shall be constructed in the first instance, and shall describe the said portion or portions in their said petition, and indicate the same on the said map and plan, and shall specify the maximum amount proposed to be expended in the construction of such portion or portions of the said system, the town board may include in its order establishing the said district or extension, a direction that the sewer commissioners shall construct only the portion or portions of the said system designated in the said petition, until extensions thereto shall be authorized as hereinafter provided. In case the town board shall make an order establishing the said district and con-

taining the said direction, the provisions of this chapter shall be applicable thereto in all respects, except that the town board shall not issue bonds to provide for the cost of such portion or portions to an amount exceeding the amount mentioned in the said petition as the maximum amount proposed to be expended in the construction of such portion or portions. Thereafter extensions to the said system may, from time to time, be authorized by the town board upon the petition of the owners of real property within the area in said district to be served by any proposed extension or extensions to the said system, representing more than one-half in value of the taxable real property within such area, as appears by the last preceding completed assessment-roll, which said petition shall comply in form, substance, and in the manner of execution, so far as applicable thereto, with the requirements of the petition for the establishment of a sewer district, and shall state the maximum amount proposed to be expended for such extension or extensions, and shall have endorsed thereon a written approval of a majority of the sewer commissioners of such district, and there shall be presented with the said petition a map prepared by a competent engineer, showing the area proposed to be served by any such proposed extension, and in case such proposed extension or extensions involve a change from the plans shown by the map and plan attached to the petition for the establishment of the said sewer district such petition shall be accompanied by a map and plan of such extension or extensions prepared in the same manner as the original map and plan, and approved by the state board of health. Before acting upon a petition to extend the system in any district or extension thereof, the town board shall give notice of the time and place at which it will meet to act thereon, by posting at least twenty-one days before the day fixed for the said meeting a notice thereof in at least four public places in the said district, and by publishing a notice thereof once in each of the three calendar weeks immediately preceding the week in which the said meeting is to be held in at least one newspaper published in the said town, if a newspaper is published therein. The cost to the petitioners of the maps, plans, specifications, and of the acknowledgments of the signatures to such petition may be made a part of the expense of constructing the said extension or extensions as provided in section two hundred and thirty of the town law with respect to the like expenditures of the original petitioners, and the maximum amount proposed to be expended in the construction of any such extension or extensions to the sewer system in any such district may be increased by the petition of the owners of real property in the area proposed to be served thereby, representing more than one-half the taxable real property therein as appears by the last preceding completed assessment-roll of said town, in the manner specified in section two hundred and thirty of the town law for increasing the maximum amount proposed to be expended for the construction of the original system. In case said extension or extensions to the said sewer system in any such district shall be authorized by the

§§ 263, 287, 288-a, 299.

Water system; indebtedness.

L. 1912, ch. 22.

town board of any such town, such extension or extensions, shall thereafter, for all purposes, be regarded as part of the original system, and shall be constructed and maintained by the sewer commissioners of the said district, and the cost of the construction thereof shall be provided for by the issue and sale of town bonds in the same manner as provided in section two hundred and thirty-seven of the town law for the payment of the cost of the original system, which said bonds shall be a town charge, and the principal and interest thereof, together with the cost of maintenance of such extension or extensions, shall be collected from the real property within the said district by the said sewer commissioners, in the same manner as though said extension or extensions had formed a part of the original system constructed in the said district. (*Added by L. 1912, ch. 205, in effect Apr. 8, 1912.*)

§ 263. Levy of tax for payment of the amount of contract.

Right of action under lighting contract.—Plaintiff contracted with the town board, under § 260, ante, for the lighting of a district, and a tax therefor was levied and collected under this section. The supervisor, into whose hands the money was paid, misappropriated the money. *Held*, that the plaintiff's claim was a liquidated indebtedness of the town, and that the remedy was by an action at law and not by mandamus against the town officers to compel the levy and collection of another tax. *Dunn v. Town of Whitestown*, 185 Fed. 585 (1911).

§ 287. Contracts for construction of water system.

The contracts made by a town board with reference to a water system constructed under the provisions of the Town Law, are the contracts of the town and the town alone is liable under them. *People ex rel. Farley v. Winkler* (1911), 203 N. Y. 445, revg. 146 App. Div. 314, 180 N. Y. Supp. 691.

§ 288-a. Refunding of indebtedness.—The town board of a town containing a water supply district in behalf of which bonds shall have been issued under authority conferred by this article may, upon the petition of the water commissioners of such district, refund the whole or any part of such indebtedness and cause new bonds of the town to be issued in substitution for such outstanding bonds or to realize money by the sale thereof for the payment of such outstanding bonds. Such new bonds shall become due within twenty years from the date of issue, shall bear interest at a rate not to exceed five per centum per annum and shall be sold for not less than their par value. Such bonds shall be a charge upon the town and shall be collected from the property within the water supply district and be otherwise subject to the provisions of this article in relation to the issue, sale and payment of the bonds originally issued. (*Added by L. 1912, ch. 22, in effect Mch. 6, 1912.*)

§ 299. Enlarging water supply system.—After the establishment of a water district and the construction of a water system therein as provided by this article, the water commissioners thereof with the consent of the town board and on the petition of the owners of more than one-half of

L. 1912, chs. 238, 275.

Water supply; fire companies.

§§ 310, 313.

the taxable real property in such district as appears by the last preceding completed assessment-roll, may enlarge the water supply system in such district as provided by this section. The petition must state the maximum amount proposed to be expended in the construction of such enlargement of the water system, must be signed by the petitioners and acknowledged in the same manner as a deed to be recorded. The petition shall also be accompanied by a map showing the proposed enlargement of the water supply system, which map shall be filed as prescribed in section two hundred and eighty-three for the filing of the map of the original district. A notice upon such petition shall be given and a hearing and determination had by and before the water commissioners in the manner as nearly as may be as is provided in section two hundred and eighty-five. The determination if favorable to the petitioners shall be approved by the town board at any regular or special meeting to the effect that the water supply system in such district shall be enlarged in accordance with the petition. All the provisions of this article in relation to contracts for the construction of the original water system in such district, and issue and sale of bonds therefor and the payment of such bonds shall apply to the enlargement of such water supply system, as authorized by this section. (*Added by L. 1912, ch. 275, in effect Apr. 11, 1912.*)

§ 310. **Town fire companies.**—The town board of any town may appoint, in writing, any number of inhabitants of their town, which they may deem necessary, to be a fire company or companies for the extinguishment of fires in their town. (*Amended by L. 1910, ch. 408 and L. 1912, ch. 238, in effect Apr. 9, 1912.*)

§ 313. **Appropriations for fire company.**—The electors of any water district, highway district, or water supply district, in which any town fire company shall have their headquarters, at a special meeting lawfully called by the town clerk, who is hereby authorized to call such special meeting, may vote, by ballot, a sum of money, not exceeding four thousand dollars, for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district or water supply district. And whenever said electors shall so vote said money for the purchase of a fire engine and apparatus for the extinguishment of fires, and for the purchase or lease of suitable buildings and grounds for keeping and storing such fire engine and apparatus for the extinguishment of fires, and other property of said water district, highway district or water supply district, the water commissioners in water districts and the town boards in highway and water supply districts may contract for and purchase for such district a good and sufficient fire engine and apparatus for the extinguishment of fires, and may contract for and purchase or lease for such district suitable buildings and grounds for keeping

§§ 314, 314-a, 315.

Town fire companies.

L. 1912, ch. 238.

and storing such fire engine and apparatus for the extinguishment of fires, and other property of said district at a price not to exceed the sum so voted, which engine and apparatus for the extinguishment of fires, and buildings and grounds, shall be the property of said water district, highway district or water supply district, but may be used and cared for by such fire company or companies under the direction and control of the water commissioners in water districts and the town board in highway and water supply districts. (*Amended by L. 1910, ch. 408 and L. 1912, ch. 238, in effect Apr. 9, 1912.*)

§ 314. **Assessments for expense of maintaining fire company.**—The purchase price of said fire engine and apparatus or other apparatus for the extinguishment of fires, and buildings and grounds, and the expense of maintaining said fire engine and apparatus for the extinguishment of fires and other property and apparatus and of maintaining said fire company or companies shall be assessed and levied upon the property of said district and collected in the same manner as other town charges are assessed, levied and collected, except that the amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum as certified by the town board, to be levied upon the taxable property of such water district, highway district or water supply district. (*Amended by L. 1910, ch. 408 and L. 1912, ch. 238, in effect Apr. 9, 1912.*) ,

§ 314-a. **Town fire companies in incorporated cities and villages.**—No such fire company, as herein provided, shall be formed in any incorporated city or village unless such incorporated city or village pays a highway tax in or to such highway district, in which case such fire company or companies may be formed to include the whole or any part of such incorporated city or village, with the consent of the board of trustees or other body performing like duties of such city or village. (*Added by L. 1912, ch. 238, in effect Apr. 9, 1912.*)

§ 315. **Ordinances.**—The board of water commissioners in any water district, established pursuant to this chapter, and the town board in any highway district or water supply district may adopt ordinances, not inconsistent with law, relating to fire protection, the prevention and extinguishment of fires and conduct thereat within said district, and to regulate or prevent the discharge of fireworks and firearms and to regulate the use of inflammable materials and the storing, sale and transportation of gunpowder and other explosives within said district, and may enforce the observance thereof by the imposition of penalties. (*Added by L. 1910, ch. 408 and amended by L. 1912, ch. 238, in effect Apr. 9, 1912.*)

TRANSPORTATION CORPORATIONS LAW.

(L. 1909, ch. 219.)

§ 62. Gas and electric light must be supplied on application.

The penalty imposed by this section upon a gas company which refuses to supply gas to a customer may be recovered by one whose existing supply has been unlawfully cut off. *Levine v. Brooklyn Union Gas Co.* (1911), 146 App. Div. 464, 133 N. Y. Supp. 255.

Action to recover penalty; burden of proof.—Where in an action to recover of a gas company the penalty for cutting off an existing supply against the wish of the customer, plaintiff proves the discontinuance of the service, the burden is on the company to justify its conduct. Where a lighting company cuts off a gas supply on the claim that its customer has refused to pay an indebtedness for gas consumed, it is incumbent upon it to show the existence of the indebtedness and a refusal to pay in order to justify its act. Where it is conceded that the customer tendered a two-dollar bill in payment of the current gas account of one dollar and sixty cents, and that the defendant refused to accept the same unless certain alleged arrears, which had in fact been paid some time before, were also discharged, and, upon plaintiff's refusal to do so, turned off the gas, it is not necessary for the consumer to keep her tender goods or to pay her money into court in order to hold the company for the statutory penalty. *Levine v. Brooklyn Union Gas Co.* (1911), 146 App. Div. 464, 133 N. Y. Supp. 255.

§ 102. Construction of lines.

Appropriation of telephone lines by state.—Where a public highway upon which the poles and wires of a telephone company are lawfully located is appropriated, pursuant to the provisions of section 4 of the Barge Canal Law, for the purpose of the construction of a reservoir, thereby necessitating the removal of such poles and wires, the telephone company is entitled to compensation. The Canal Board may lawfully adjust such claim by providing the telephone company with a right-of-way over other portions of the appropriated parcel and reimbursing it for the necessary expenses incident to such removal. Rept. of Atty. Genl., Feb. 6, 1912.

Erection of poles on public highways; negligence of company; negligence of commissioner of highways.—Where a telephone company erects poles on a public highway under the authority of this section it must place them so that they will not interfere with, or make dangerous, the use of the highway by the public. But where a highway in a rural community is twenty-four feet wide a telephone company is not negligent in placing its poles two and a half feet outside the traveled roadway, and hence is not liable for injuries received by a person who was thrown against such pole when the horse which she was driving ran away. The telephone company is not liable by reason of the fact that, although directed by the commissioner of highways to place the poles further from the roadway, it did not do so because it was impossible without destroying shade trees to which the owners objected, where the commissioner knowing the location of the poles did not object or ask that they be moved. The commissioner of highways was not negligent so as to charge the town by allowing the telegraph poles to remain two and one-half feet outside the traveled highway. *Bailey v. Bell Telephone Co.* (1911), 147 App. Div. 224, 131 N. Y. Supp. 1000.

VILLAGE LAW.

(L. 1909, ch. 64.)

§ 51-a. Registration of voters.

Women otherwise entitled to vote on propositions at special village elections are not required to register. Rept. of Atty. Genl., Mch. 8, 1912.

§ 82. Clerk.

A village clerk is not required to act as registrar of vital statistics, without appointment or designation by the village board of health. Rept. of Atty. Genl. (1911), Vol. 2, p. 622.

§ 89. General powers of board of trustees.

Right to insure employees.—A village has no legal right to insure its employees against accident or to insure itself against liability for accidents arising from slippery or defective sidewalks and pay the premium out of the funds of the village. Rept. of Atty. Genl., Feb. 21, 1912.

Trustees of a village have no right to enter into contracts with each other at the expense of those for whom they are acting and whose interests they are bound to protect. The illegality of such contracts does not depend upon statutory enactments, but is a principle of the common law. Matter of Moran (1911), 145 App. Div. 642, 131 N. Y. Supp. 438.

§ 91. Licensing occupations.

Express companies subject to village ordinance.—An express company using vehicles in carrying on its business in a village is subject to an ordinance prohibiting such occupation without a license therefor under this section. Rept. of Atty. Genl. (1911), Vol. 2, p. 570.

§ 104. Annual assessment roll.

Preparation of assessment rolls.—While the provisions of this section require assessors to prepare village assessment rolls in substantially the same form as that provided for by section 21 of the Tax Law those columns which are manifestly inapplicable to villages may be omitted. Rept. of Atty. Genl. (1911), Vol. 2, p. 639.

§ 121. Certificate of sale.

See *Hleinbothem v. Village of North Pelham* (1911), 144 App. Div. 698, 129 N. Y. Supp. 715.

§ 146. Notice of meeting of board to consider petition for improvement.

—*Subdivision 5, added by L. 1912, ch. 224, in effect Apr. 8, 1912, as follows:*

5. If the street petitioned to be laid out, altered, widened, narrowed or discontinued shall cross a railroad such notice shall be served upon the railroad company as required by section ninety of the railroad law.

§ 159. Changing grade of street or bridge.

Costs allowed to a landowner pursuant to this section are within the discretion of the court under section 3240 of the Code of Civil Procedure. A landowner who has been awarded damages on account of a change in the grade of a street is entitled by virtue of section 3372 of the Code of Civil Procedure to recover costs of the

L. 1912, chs. 125, 364. Sprinkling streets; lighting system.§§ 165, 186, 244.

proceeding subsequent to the appointment of the commissioners at the same rate as is allowed to the defendant, when he is the prevailing party in an action in the Supreme Court. *Matter of Bradley* (1911), 145 App. Div. 49, 129 N. Y. Supp. 450.

§ 165. **Sprinkling streets.**—The board of trustees may cause the streets of the village or any part thereof to be sprinkled with water, oil or other dust-laying substance wholly at the expense of the village or may assess the expense thereof, in whole or in part, upon the owners or occupants of the adjoining land, and in villages, except in Franklin county, having a sufficient water supply, it shall be the duty of the board of trustees, upon the petition signed by a majority of the taxpayers of any street or streets, to cause such street or streets to be sprinkled with water, oil or other dust-laying substance and assess the expense thereof in whole or in part as aforesaid. (*Amended by L. 1912, ch. 125, in effect Apr. 4, 1912.*)

§ 186. **Civil jurisdiction of police justice.**

The jurisdiction of a village police justice in civil cases is concurrent with the justices of the peace within the limits of the village. *Rept. of Atty. Genl., Feb. 21, 1912.*

The amendment of 1911, providing that a police justice in a village shall have the same jurisdiction as a justice of the peace of a town in civil actions, does not broaden the powers of a police justice to include the solemnization of marriages. *Rept. of Atty. Genl., Jan. 19, 1912.*

§ 244. **Supervision and extension of system.**—The lighting system acquired or established under this article shall be under the control and supervision of the board of light commissioners. The board shall keep it in repair and may, from time to time, if it has sufficient funds, extend such system, if the expense thereof in any year will not exceed one thousand dollars. If the estimated expense will exceed one thousand dollars, such extension can only be made when authorized by a proposition adopted at an election, in which event, it shall be so made. Such system may be so extended outside the village in, upon and along the highways within a town in which the village is wholly or partly situated, provided, however, that if at the time of such extension there shall be a private electric light corporation operating within such village or within the territory into which such system shall be extended, such extension shall not be made without the permission and approval of the proper public service commission. If such system shall be so extended outside of a village into or through a town or a lighting district thereof, the board of light commissioners of the village may contract with the town board of such town for lighting the streets, highways, public grounds and public buildings of such town or lighting district, in pursuance of the provisions of article twelve of the town law, which shall be applicable to such contract and to the levying of a tax for the payment of the amounts which shall be payable thereunder to the treasurer of the village. Wherever such system shall be so extended outside a village, occupants of premises adjacent to such extended system outside the village shall be entitled to be supplied with

§§ 276, 332, 348-a, 359.

Sewer system; boundaries.

L. 1912, chs. 122, 124.

light therefrom under the same conditions and at the same rates as occupants of premises in the village. (*Amended by L. 1912, ch. 364, in effect Apr. 15, 1912.*)

§ 276. **Contracts with other municipalities, sewer districts, et cetera.**—The board of sewer commissioners may contract for the connection of the sewers thereof with the sewers of another village, or of a town, or city, or of a sewer district established under the provisions of article eleven of the town law or of chapter three hundred and forty-eight of the laws of nineteen hundred and one and the laws supplementary thereto or amendatory thereof; or jointly with such other village or a town or city or sewer district established as aforesaid, may construct, maintain, operate or use sewers, outlets or disposal works; or may contract with any such other village, or a town, or city, or sewer district established as aforesaid for the right to construct and maintain through any such other village, town or city, or sewer district established as aforesaid, an outlet sewer, including the right to acquire real property for such sewer outlet, which thereupon may be acquired either at private sale or by condemnation as authorized by this act. But no such contract shall be made unless a proposition therefor be adopted, stating the maximum expense. (*Amended by L. 1909, ch. 212 and L. 1912, ch. 122, in effect Apr. 4, 1912.*)

§ 332. **Officer not to be interested in contracts.**

Application.—The provisions of this section are not applicable to the street superintendent of the village of Saratoga Springs, as to whom a different restriction contained in the law creating the office is applicable. *Morrissey v. Sewer, Water and Street Commission* (1911), 73 Misc. 432, 133 N. Y. Supp. 365.

§ 348-a. **Extension of boundaries by the annexation of territory belonging to the village.**—If a village be the owner of uninhabited territory adjoining the village such territory may be annexed to the village if a majority of the members of the town board of the town in which such village is situated residing outside of the village consent thereto. Such consent shall be acknowledged in the same manner as a deed to be recorded, and shall be filed in the office of the village clerk. Upon the filing of such consent the board of trustees of such village may adopt a resolution annexing such territory without the presentation of a petition and without the adoption of a proposition at a village election as provided by the last preceding section. Such annexation shall take effect at the same time and subject to the same conditions as if the adoption of such proposition by the board of trustees were the adoption at a special election of a proposition for annexation as provided in the last preceding section. (*Added by L. 1912, ch. 124, in effect Apr. 4, 1912.*)

§ 359. **Establishment of disputed, unknown or uncertain boundaries.**—If the boundary lines, or any of the boundary lines, of any incorporated village organized or existing pursuant to general or special act, or whose

incorporation is lawfully established, are uncertain or there is a reasonable doubt as to their exact location, for any reason, or if, in the statute or records by which the village was incorporated a boundary line or lines was not completed, leaving a hiatus therein, or if the records and papers showing the boundaries of a village incorporated under a general act are lost or cannot be identified, such boundary line or lines may be settled and established in the following manner: An application in writing, subscribed by the president of the village, requesting the establishment of such boundaries, may be presented to the board of supervisors of the county in which the village is located. It shall then be the duty of such board of supervisors to take action upon the application by resolution, at such time, within sixty days thereafter, as it may determine; but the board shall not adopt any resolution determining or defining such boundary line or lines until after a public hearing is had thereon, before the board, upon a notice to be published for three consecutive weeks next preceding the meeting of the board at which the matter is to be heard, in a newspaper published in the village, and if there be a newspaper published in the town outside of the village, in one such newspaper also. A copy of the notice shall also be served personally, at least fifteen days before the meeting of such board, on the supervisor and town clerk of the town or each of the towns in which the village is located. The board shall give a hearing to all persons appearing in support of or in opposition to the adoption of such resolution or presenting statutes, records, documents or other facts affecting the boundaries of such village. The board may take proof and testimony relating to the subject-matter of such investigation. The board may adopt a resolution determining and defining the boundary lines of the village, to include both the known and undisputed lines as well as those which are uncertain or unknown as aforesaid. A copy of the resolution, as adopted by the board, shall contain the courses, distances and fixed monuments necessary for an accurate description thereof, and a copy of such resolution duly certified by the clerk of the board, together with a map or survey of such boundaries as fixed by the board, shall be filed in the office of the secretary of state within thirty days after the adoption of the resolution. The filing of such map shall be equivalent to a compliance with the provisions of section eighty of this chapter; but where a map shall not have been filed pursuant to the requirements of such section on account of the boundary lines of a village being uncertain or unknown, as provided in this section, proceedings for the establishment and settlement thereof shall be begun by the president of the village under the provisions of this section within three months after this section takes effect. The boundary lines shall be those fixed by the resolution, but this section shall not be deemed to authorize the inclusion within a village of any substantial area of territory which has not been either (1) commonly recognized as a part of the village or (2) treated and claimed by the village authorities, at some time previously, as a part of the village or, (3) the subject of a

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| § 359. | Establishment of boundaries. | L. 1912, ch. 123. |
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reasonable dispute, on a question of law or fact, as to its location within or without the village. The expense of making any map or survey accompanying the filing of such resolution, by whomsoever incurred, or in the production of papers, documents or statutes at the hearing relating to such boundary lines, shall be borne by the village and the payment thereof provided for by taxation in the village as other village expenses. (*Added by L. 1912, ch. 123, in effect Apr. 4, 1912.*)

VINEGAR.

Definition of cider vinegar; Agricultural L., § 70.

**TABLE OF CONSOLIDATED LAWS
AMENDED OR REPEALED.**

TABLE

OF

CONSOLIDATED LAWS AMENDED OR REPEALED.

Note.—It should be noted that this table gives the amendments and repeals of the Consolidated Laws effected in 1909, 1910 and 1911, as well as in 1912. The figures in parentheses in the last column indicate the volume of the Consolidated Laws where the section amended or repealed will be found.

CHANGES IN THE CONSOLIDATED LAWS, 1909–1912.*

(Sections, etc., are amended unless it is otherwise indicated.)

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|---------|
| AGRICULTURAL LAW: | | | | |
| (L. 1909, ch. 9, constituting cons. laws, ch. 1.) | | | | |
| 2 | Salary of commissioner..... | 1909 | 580 | (1) 207 |
| 4 | Expert butter and cheese makers..... | 1910 | 112 | (7) 15 |
| 12, added | Examination of food for state institutions.. | 1910 | 434 | (7) 15 |
| 13, added | Decisions of department to be furnished to corporations, etc., dealing in products reg- ulated | 1911 | 313 | (8) 7 |
| 30 | Adulterated cream | 1909 | 186 | (1) 213 |
| 30 | Butter and cheese defined..... | 1911 | 59 | (8) 8 |
| 30 | Adulterated milk defined..... | 1911 | 608 | (8) 8 |
| 30, subd. 2 | Adulterated milk defined..... | 1910 | 341 | (7) 16 |
| 31 | Care of cows and produce therefrom..... | 1910 | 216 | (7) 16 |
| 35 | Inspection of milk..... | 1911 | 608 | (8) 9 |
| 37 | Regulations as to condensed milk..... | 1911 | 608 | (8) 11 |
| 40 | Oleaginous substances | 1909 | 357 | (1) 225 |
| 41 | Coloring matter, etc..... | 1909 | 357 | (1) 226 |
| 45 | Unclean receptacles for milk; milk gather- ing stations; licenses..... | 1911 | 608 | (8) 11 |
| 47 | Receptacles for milk; milk can inspectors.. | 1911 | 608 | (8) 14 |
| 48 | Branding or labeling cheese..... | 1910 | 207 | (7) 17 |
| 64a, added | Tuberculous animals | 1909 | 538 | (1) 235 |
| 70 | Vinegar | 1909 | 210 | (1) 237 |
| 70 | Vinegar | 1912 | 26 | (9) 10 |
| 72 | Vinegar | 1909 | 210 | (1) 239 |
| 72 | Vinegar | 1911 | 228 | (8) 15 |
| 73 | Vinegar | 1909 | 210 | (1) 239 |
| 73 | Penalties for violation of art. 4..... | 1910 | 156 | (7) 17 |
| 90 | Diseases of domestic animals..... | 1909 | 240 | (1) 240 |
| 90 | Diseases of domestic animals..... | 1909 | 312 | (1) 240 |
| 91 | Quarantines | 1909 | 313 | (1) 241 |
| 92 | Quarantined farms | 1909 | 315 | (1) 241 |
| 93 | Detention and destruction of animals..... | 1909 | 315 | (1) 242 |
| 95 | Destruction of diseased animals..... | 1909 | 316 | (1) 243 |
| 96 | Regulations | 1909 | 352 | (1) 244 |
| 96 | Penalty for violation of quarantine..... | 1910 | 437 | (7) 18 |
| 96 | Expense of enforcing regulations..... | 1911 | 255 | (8) 15 |
| 97 | Penalties | 1909 | 352 | (1) 245 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|--|-------|----------|---------|
| AGRICULTURAL LAW—(Continued). | | | | |
| 99 | Appraisal of condemned animals..... | 1909 | 314 | (1) 246 |
| 99 | Appraisal of condemned animals..... | 1910 | 670 | (7) 19 |
| 101 | Post-mortem examination of animals..... | 1909 | 314 | (1) 247 |
| 102 | Compensation for animals destroyed..... | 1909 | 314 | (1) 247 |
| 104, repealed | Federal regulations, diseases of animals... | 1909 | 232 | (1) 248 |
| 105, repealed | Rights of federal inspectors..... | 1909 | 232 | (1) 248 |
| 106 | Veal | 1910 | 561 | (7) 20 |
| 160 | Commercial feeding stuffs..... | 1909 | 317 | (1) 252 |
| 160 | Commercial feeding stuffs..... | 1910 | 436 | (7) 21 |
| 160 | Commercial feeding stuffs..... | 1912 | 277 | (9) 11 |
| 161 | Statements on package..... | 1909 | 317 | (1) 253 |
| 161 | Statements on package..... | 1911 | 314 | (8) 17 |
| 162 | Statements filed with commissioner..... | 1909 | 317 | (1) 254 |
| 162 | Statements to be filed..... | 1911 | 314 | (8) 18 |
| 163 | License fee | 1909 | 317 | (1) 254 |
| 165 | Adulterated meal | 1909 | 317 | (1) 255 |
| 220-224 | Commercial fertilizers | 1910 | 435 | (7) 23 |
| 240 | Turpentine; linseed or flaxseed oil..... | 1911 | 816 | (8) 18 |
| 242 | Turpentine; linseed or flaxseed oil..... | 1911 | 816 | (8) 19 |
| 262 | Sale of apples, pears and peaches..... | 1911 | 511 | (8) 19 |
| 263, repealed | Barrels; apples, pears and quinces..... | 1912 | 81 | (9) 12 |
| 291, 293 | State fair commission..... | 1910 | 366 | (7) 26 |
| 304 | Plant diseases; insect pests..... | 1909 | 222 | (1) 267 |
| 304 | Plant diseases; insect pests..... | 1911 | 798 | (8) 20 |
| 305 | Infected nursery stock..... | 1909 | 222 | (1) 269 |
| 305 | Infected nursery stock..... | 1911 | 798 | (8) 23 |
| 310 | Apportionment of moneys for promotion of agriculture | 1912 | 73 | (9) 12 |
| Art. 15 (§§ 340, 341) renumbered art. 16 (§§ 360, 361) | Laws repealed; when to take effect..... | 1912 | 297 | (9) 15 |
| Art. 15 (§§ 340, 341), added | Inspection and sale of seeds..... | 1912 | 297 | (9) 14 |
| BANKING LAW: | | | | |
| (L. 1909, ch. 10, constituting cons. laws, ch. 2.) | | | | |
| Preamble | Savings and loan associations..... | 1910 | 126 | (7) 23 |
| 2 | Savings and loan associations..... | 1910 | 126 | (7) 23 |
| 5a, added | Retirement of employees in banking department | 1912 | 212 | (9) 23 |
| 8 | Powers of superintendent of banks..... | 1912 | 104 | (9) 23 |
| 14 | Savings and loan associations..... | 1910 | 126 | (7) 30 |
| 19 | Delinquent corporations and individual bankers | 1910 | 452 | (7) 31 |
| 21 | Reports of savings and loan associations... | 1910 | 126 | (7) 37 |
| 21 | Reports to superintendent of banks..... | 1911 | 707 | (8) 34 |
| 27, subd. 3 | Loans upon real estate..... | 1909 | 410 | (1) 325 |
| 27, subd. 3 | Savings and loan associations..... | 1910 | 126 | (7) 39 |
| 27, subd. 4 | Purchase of evidences of debt by officers, etc. | 1909 | 402 | (1) 326 |
| 27, subd. 7 | Loans to officers, etc., of money corporation | 1911 | 585 | (8) 35 |
| 27, subd. 8 | Savings and loan associations..... | 1910 | 126 | (7) 39 |
| 27, subd. 9 | Loans by banking corporations..... | 1909 | 240 | (1) 327 |
| 33a, 33b, added | Foreign banking corporations..... | 1911 | 772 | (8) 36 |
| 38 | Savings and loan associations..... | 1910 | 126 | (7) 40 |
| 42 | Meetings of directors or trustees..... | 1911 | 708 | (8) 37 |
| 44 | Security by depositaries of court funds.... | 1911 | 709 | (8) 38 |
| 66 | General powers of banks..... | 1912 | 101 | (9) 26 |
| 67 | Deposit of bank reserves..... | 1909 | 223 | (1) 351 |
| 67 | Lawful money reserve; certificates of deposit | 1910 | 399 | (7) 41 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|---------|
| BANKING LAW—(Continued). | | | | |
| 67 | Lawful money reserve..... | 1911 | 200 | (8) 38 |
| 104 | Certificates of deposit..... | 1910 | 399 | (7) 43 |
| 137 | Trustees of savings banks..... | 1912 | 237 | (9) 27 |
| 146, subd. 4 | Investment of savings bank deposits..... | 1912 | 100 | (9) 29 |
| 159 | Savings and loan associations..... | 1910 | 126 | (7) 45 |
| 160 | School savings funds..... | 1909 | 497 | (1) 421 |
| 160 | Savings and loan associations..... | 1910 | 126 | (7) 45 |
| 186, subd. 11 | Powers of trust companies..... | 1911 | 687 | (8) 40 |
| 190 | Security not required of trust company, when; trust fund debts preferred..... | 1909 | 240 | (1) 433 |
| 193 | Trust company investments..... | 1909 | 294 | (1) 434 |
| 198 | Lawful money reserve, trust companies... | 1911 | 200 | (8) 42 |
| 198 | Lawful money reserve, trust companies... | 1912 | 49 | (9) 29 |
| Art. 6, preamble | Savings and loan associations..... | 1910 | 126 | (7) 49 |
| 210 | Savings and loan associations..... | 1910 | 126 | (7) 49 |
| 211 | Savings and loan associations..... | 1910 | 126 | (7) 49 |
| 211, subd. k | Savings and loan associations, fines..... | 1912 | 192 | (9) 32 |
| 212-214 | Savings and loan associations..... | 1910 | 126 | (7) 51 |
| 215 | Savings and loan associations..... | 1910 | 126 | (7) 53 |
| 215, first ¶ | Savings and loan associations..... | 1912 | 103 | (9) 32 |
| 216-218 | Savings and loan associations..... | 1910 | 126 | (7) 54 |
| 219 | Savings and loan associations..... | 1910 | 126 | (7) 56 |
| 219 | Savings and loan associations..... | 1911 | 861 | (8) 44 |
| 219 | Savings and loan associations..... | 1912 | 102 | (9) 32 |
| 220-238 | Savings and loan associations..... | 1910 | 126 | (7) 57 |
| 304 | Safe deposit companies..... | 1911 | 371 | (8) 46 |
| 305, added | Lien of safe deposit companies..... | 1911 | 382 | (8) 48 |
| 310-313 | Personal loan associations..... | 1910 | 127 | (7) 68 |
| BENEVOLENT ORDERS LAW: | | | | |
| (L. 1909, ch. 11, constituting cons. laws, ch. 3.) | | | | |
| 2, subd. 7 | Mystic Shrine for North America..... | 1910 | 145 | (7) 73 |
| 2, subd. 18, added | Junior Order of United American Mechan- ics | 1909 | 420 | (1) 491 |
| 2, subd. 19, added | Modern Woodmen of America..... | 1910 | 420 | (7) 73 |
| 2, subd. 20, added | Brotherhood of the Commonwealth..... | 1910 | 297 | (7) 73 |
| 2, subd. 21, added | Maccabees of the World..... | 1912 | 65 | (9) 35 |
| 2, subd. 21, added | Loyal Order of Moose..... | 1912 | 213 | (9) 35 |
| 2, last ¶ | Organization | 1909 | 240 | (1) 491 |
| 2, last ¶ | Organization | 1910 | 420 | (7) 73 |
| 2, last ¶ | Organization | 1912 | 65 | (9) 35 |
| 3 | Powers | 1910 | 420 | (7) 73 |
| 3 | Powers | 1912 | 65 | (9) 35 |
| 4 | Terms of trustees..... | 1912 | 65 | (9) 36 |
| 5 | Powers of trustees..... | 1912 | 65 | (9) 37 |
| 7 | Mystic Shrine for North America..... | 1910 | 145 | (7) 74 |
| 10 | Mortgaging property | 1911 | 307 | (8) 49 |
| BUSINESS CORPORATIONS LAW: | | | | |
| (L. 1909, ch. 12, constituting cons. laws, ch. 4.) | | | | |
| 2, opening ¶ | Incorporation | 1909 | 484 | (1) 506 |
| 2a, added | Corporation for practice of law prohibited. | 1909 | 484 | (1) 509 |
| 15 | Water companies | 1909 | 240 | (1) 518 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|---------|
| CANAL LAW: | | | | |
| (L. 1909, ch. 13, constituting cons. laws, ch. 5.) | | | | |
| 15, subd. 3 | Sale or exchange of canal lands..... | 1910 | 350 | (7) 99 |
| 37 | Advances to superintendent of repairs.... | 1909 | 240 | (1) 557 |
| 61, 64 | Undertakings of division and resident en- gineers | 1910 | 113 | (7) 100 |
| 106 | Purchasers of surplus water..... | 1909 | 240 | (1) 575 |
| 126a, added | Expense of operating lift or swing bridge. | 1911 | 677 | (8) 59 |
| 178 | Changing names of mortgaged canal boats. | 1910 | 181 | (7) 101 |
| CIVIL RIGHTS LAW: | | | | |
| (L. 1909, ch. 14, constituting cons. laws, ch. 6.) | | | | |
| 51 | Exhibition of photographs..... | 1911 | 226 | (8) 87 |
| CIVIL SERVICE LAW: | | | | |
| (L. 1909, ch. 15, constituting cons. laws, ch. 7.) | | | | |
| 13, subd. 2 | Exempt class, secretaries..... | 1912 | 170 | (9) 48 |
| 14 | Competitive class | 1911 | 547 | (8) 89 |
| 20 | Disbursing officers | 1909 | 240 | (1) 657 |
| 22 | Removal of Spanish war veterans..... | 1910 | 264 | (7) 106 |
| 29, added | Examination pamphlet and civil list..... | 1910 | 590 | (7) 108 |
| CONSERVATION LAW: | | | | |
| (L. 1911, ch. 647, constituting cons. laws, ch. 65.) | | | | |
| 3 | Office force | 1912 | 444 | (8) 94 |
| 9 | Suits and prosecutions..... | 1912 | 444 | (9) 53 |
| 12 | Reports | 1912 | 444 | (9) 54 |
| 26-35, added | Actions for penalties..... | 1912 | 444 | (9) 54 |
| Art. 4 (§§ 50, 51), repealed | Lands and forests..... | 1912 | 444 | (9) 57 |
| Art. 4 (§§ 50- 112), added | Lands, forests and public parks..... | 1912 | 444 | (9) 57 |
| Art. 5, repealed | Fish and game..... | 1912 | 318 | (9) 87 |
| Art. 5, added | Fish and game..... | 1912 | 318 | (9) 87 |
| COUNTY LAW: | | | | |
| (L. 1909, ch. 16, constituting cons. laws, ch. 11.) | | | | |
| 10 | County clerks, certain counties..... | 1910 | 279 | (7) 114 |
| 10 | Board of supervisors, chairman..... | 1911 | 250 | (8) 146 |
| 10 | Board of supervisors, chairman..... | 1912 | 193 | (9) 149 |
| 12, subd. 5 | Powers of boards of supervisors..... | 1911 | 359 | (8) 146 |
| 12, subd. 16 | Supervisors in Erie county..... | 1909 | 477 | (1) 713 |
| 12, subd. 26, added | Authorizing town to borrow money..... | 1910 | 141 | (7) 114 |
| 12, subd. 27, added | Societies for prevention of cruelty to chil- dren | 1911 | 545 | (8) 147 |
| 12, subd. 27, added | Societies for prevention of cruelty to ani- mals | 1911 | 663 | (8) 147 |
| 12, subd. 27, re- numbered subd. 28 | Societies for prevention of cruelty to ani- mals | 1912 | 148 | (9) 149 |
| 12, subd. 28, added | Appropriation and tax for agricultural pur- poses | 1912 | 35 | (9) 149 |

TABLE OF LAWS AMENDED OR REPEALED.

551

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--------------------------------|--|-------|----------|---------|
| COUNTY LAW—(Continued). | | | | |
| 12, subd. 28, added | Side-path funds | 1912 | 194 | (9) 150 |
| 12, subd. 29, added | Maintenance of persons in state charitable institution | 1912 | 148 | (9) 150 |
| 12, subd. 29, added | Expenses of district attorney..... | 1912 | 235 | (9) 150 |
| 12, subd. 30, added | Maintenance of county buildings..... | 1912 | 235 | (9) 151 |
| 23 | Compensation of supervisors, certain coun- ties | 1910 | 279 | (7) 115 |
| 23 | Compensation of supervisors, Rockland county | 1911 | 554 | (8) 148 |
| 23 | Compensation of supervisors, Dutchess county | 1912 | 34 | (9) 151 |
| 35 | Alteration and erection of towns..... | 1911 | 250 | (8) 149 |
| 38 | Fire districts in two or more counties.... | 1909 | 405 | (1) 735 |
| 38, subds. 8, 9 | Fire districts | 1910 | 115 | (7) 116 |
| 45-47, added | County hospitals for tuberculosis..... | 1909 | 341 | (1) 742 |
| 48, added | County hospitals for tuberculosis..... | 1909 | 341 | (1) 744 |
| 48, subd. 5 | County hospitals for tuberculosis; super- intendent | 1912 | 149 | (9) 153 |
| 48, subd. 5 | County hospitals for tuberculosis; super- intendent | 1912 | 239 | (9) 153 |
| 49, added | County hospitals for tuberculosis..... | 1909 | 341 | (1) 746 |
| 49a, added | County hospitals for tuberculosis..... | 1909 | 341 | (1) 746 |
| 49a | County hospitals for tuberculosis; mainte- nance of patients..... | 1912 | 149 | (9) 153 |
| 49a | County hospitals for tuberculosis; mainte- nance of patients..... | 1912 | 239 | (9) 153 |
| 49b-49e, added | County hospitals for tuberculosis..... | 1909 | 341 | (1) 747 |
| 61 | County highways and bridges..... | 1909 | 240 | (1) 752 |
| 117 | Injuries to sheep, etc., by dogs..... | 1912 | 200 | (9) 154 |
| 162 | Special deputy county clerks..... | 1911 | 727 | (8) 150 |
| 165 | Hours, Westchester county offices..... | 1909 | 199 | (1) 794 |
| 168 | Register of moneys paid into court..... | 1910 | 160 | (7) 118 |
| 169 | Special deputy clerks, Queens county.... | 1910 | 694 | (7) 119 |
| 180, subd. 1 | Reduction of number of coroners..... | 1912 | 91 | (9) 154 |
| 194 | Employment of stenographers by coroners. | 1910 | 158 | (7) 120 |
| 195, subd. 4 | Sheriffs | 1910 | 418 | (7) 120 |
| 203 | District attorney, Niagara county..... | 1911 | 95 | (8) 151 |
| 203 | Assistant district attorney; district attor- ney's stenographer, Niagara county.... | 1912 | 544 | (9) 155 |
| 215, 216, added | County auditor | 1910 | 152 | (7) 121 |
| 232, subd. 1 | Salaries of county judge and surrogate, Albany county | 1912 | 549 | (9) 157 |
| 232, subd. 14 | Salaries of county judge and surrogate, Erie county | 1912 | 37 | (9) 157 |
| 232, subd. 22 | Salary of surrogate, Jefferson county.... | 1910 | 281 | (7) 121 |
| 232, subd. 23 | Salary of surrogate, Kings county..... | 1911 | 413 | (8) |
| 232, subd. 27 | Salaries of county judge and surrogate, Monroe county | 1912 | 549 | (9) 158 |
| 232, subd. 29 | Salaries of county judge and surrogate, Nassau county | 1910 | 300 | (7) 121 |
| 232, subd. 31 | Salary of surrogate, Oneida county..... | 1911 | 203 | (8) 153 |
| 232, subd. 41 | Salary of county judge, Richmond county. | 1911 | 413 | (8) |
| 232, subd. 58 | Salary of surrogate, Westchester county... | 1912 | 549 | (9) 158 |
| 232, subd. 61 | Salaries of county judge and surrogate, Nassau county | 1910 | 300 | (7) 122 |
| 232, subd. 62, added | Salary of surrogate, Kings county..... | 1911 | 413 | (8) |
| 232, subd. 63, added | Salary of county judge, Richmond county. | 1911 | 413 | (8) |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|----------|
| COUNTY LAW—(Continued). | | | | |
| 232, subd. 64, added | Salaries of county judge and surrogate, Erie county | 1912 | 37 | (9) 153 |
| 232, subd. 64, added | Expenses of surrogate, Chautauqua county. | 1912 | 92 | (9) 158 |
| 232, subd. 65, added | Salaries of certain county judges and surro- gates | 1912 | 549 | (9) 158 |
| 233 | Salaries and expenses of county judges.... | 1909 | 122 | (1) 819 |
| 233 | Salaries and expenses of county judges.... | 1909 | 228 | (1) 819 |
| 234, added | County comptroller | 1909 | 466 | (1) 820 |
| 235, added | County comptroller | 1909 | 466 | (1) 821 |
| 235 | County comptroller | 1910 | 8 | (7) 122 |
| 236-239, 239a, added | County comptroller | 1909 | 466 | (1) 823 |
| 240, subd. 4 | Compensation of court criers..... | 1910 | 34 | (7) 124 |
| 241a, added | Compensation of supervisors and assessors attending tax meetings..... | 1911 | 51 | (8) 153 |
| 250, added | Expenses of peace officers for injuries..... | 1912 | 95 | (9) 159 |
| DEBTOR AND CREDITOR LAW: | | | | |
| (L. 1909, ch. 17, constituting cons. laws, ch. 12.) | | | | |
| Art. 2 | Schedule of sections..... | 1909 | 240 | (1) 862 |
| 189 | Distribution of moneys..... | 1909 | 240 | (1) 919 |
| DECEDENT ESTATE LAW: | | | | |
| (L. 1909, ch. 18, constituting cons. laws, ch. 13.) | | | | |
| Art. 2 | Schedule of sections..... | 1909 | 240 | (1) 939 |
| 18-20, repealed | Devise or bequest to certain corporations.. | 1911 | 857 | (8) 156 |
| 29 | Devise or bequest not to lapse..... | 1912 | 384 | (9) 162 |
| 44 | Recording foreign will..... | 1909 | 240 | (1) 977 |
| 45 | Authentication of foreign wills..... | 1909 | 304 | (1) 978 |
| 47 | Validity and effect of testamentary disposi- tions | 1911 | 244 | (8) 157 |
| 48, added | Application of certain sections..... | 1909 | 240 | (1) 982 |
| 98, subd. 12 | Representation among collaterals..... | 1909 | 240 | (1) 984 |
| 103 | Action against husband for debts of de- ceased wife | 1909 | 240 | (1) 1005 |
| 104, added | Application of certain sections..... | 1909 | 240 | (1) 1005 |
| 120 renumbered | Appraisal of estate..... | 1909 | 240 | (1) 1010 |
| 120, added | Actions by or against executors, etc..... | 1909 | 240 | (1) 1009 |
| 121, added | Action by executor of executor..... | 1909 | 240 | (1) 1010 |
| Schedule of repeals | R. S., pt. 3, ch. 8, tit. 3, §§ 1, 2, 11, inserted. | 1909 | 240 | (1) 1011 |
| Schedule of repeals | L. 1904, ch. 106, inserted..... | 1909 | 240 | (1) 1012 |
| DOMESTIC RELATIONS LAW: | | | | |
| (L. 1909, ch. 19, constituting cons. laws, ch. 14.) | | | | |
| 11 | Solemnization of marriages..... | 1911 | 610 | (8) 161 |
| 11 | Solemnization of marriages..... | 1912 | 166 | (9) 164 |
| 14 | Marriage licenses | 1912 | 216 | (9) 165 |
| 15 | Marriage licenses; consents of parents.... | 1912 | 241 | (9) 166 |
| 19 | Marriage licenses; search of records..... | 1912 | 241 | (9) 168 |
| 116 | Abrogation of voluntary adoption..... | 1910 | 154 | (7) 134 |
| DRAINAGE LAW: | | | | |
| (L. 1909, ch. 20, constituting cons. laws, ch. 15.) | | | | |
| Art. 2 | Title | 1910 | 624 | (7) 135 |
| 2 | Petition for drainage..... | 1910 | 624 | (7) 135 |

TABLE OF LAWS AMENDED OR REPEALED.

553

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|----------|
| DRAINAGE LAW—(Continued). | | | | |
| 4 | Proceedings on petition..... | 1910 | 624 | (7) 135 |
| 10 | Commissioners | 1910 | 624 | (7) 136 |
| 12 | Survey and maps..... | 1910 | 624 | (7) 136 |
| 18 | Condemnation of land..... | 1910 | 624 | (7) 137 |
| 19 | Application of art. 2..... | 1910 | 624 | (7) 137 |
| 40 | Nonpayment of assessments..... | 1909 | 240 | (1) 1105 |
| 67 | Notice of assessments..... | 1909 | 240 | (1) 1113 |
| EDUCATION LAW: | | | | |
| (L. 1909, ch. 21, as amended by L. 1910, ch. 140, constituting cons. laws, ch. 16.) | | | | |
| <i>(Section numbers, etc., hereafter given are those of this amendatory act.)</i> | | | | |
| 63, repealed | Dissolution of educational corporations.... | 1911 | 860 | (8) 164 |
| 63, added | Dissolution of educational corporations.... | 1911 | 860 | (8) 164 |
| 99, added | Reports, etc., filed with commissioner of education | 1911 | 159 | (8) 165 |
| 121 | Formation of new school district..... | 1912 | 294 | (9) 171 |
| 180-182, 134, repealed | Division of union free school districts.... | 1911 | 334 | (8) 165 |
| 194 | Time of school district meetings..... | 1910 | 442 | (7) 178 |
| 206, subd. 5 | School district treasurer..... | 1910 | 442 | (7) 182 |
| 224, subd. 4 | School year defined..... | 1910 | 442 | (7) 186 |
| 301, subd. 2 | Union free school district trustees..... | 1910 | 442 | (7) 203 |
| 303, subd. 6 | School district meetings..... | 1910 | 442 | (7) 204 |
| 306 | Boards of education, annual meetings.... | 1911 | 830 | (8) 166 |
| 310, subd. 21, added | Medical inspection of children..... | 1910 | 602 | (7) 210 |
| 310, subd. 21 | Medical inspection of children..... | 1912 | 215 | (9) 172 |
| 321 | Records and reports of boards of education. | 1910 | 442 | (7) 214 |
| Art. 14 | District superintendents | 1910 | 607 | (7) 221 |
| 410 | Assessment of school taxes..... | 1911 | 830 | (8) 166 |
| 435 | Unpaid school taxes..... | 1910 | 284 | (7) 240 |
| 440, subd. 2 | School tax on state lands, Dutchess county | 1911 | 593 | (8) 166 |
| 464 | Acquisition of sites for schoolhouses..... | 1911 | 782 | (8) 167 |
| 493, subd. 6 | Apportionment of funds for non-resident pupils | 1912 | 276 | (9) 173 |
| 494 | Apportionment and payment of school mon- eys | 1912 | 77 | (9) 173 |
| 496 | Certificate of apportionment of school mon- eys | 1912 | 77 | (9) 174 |
| 561, subd. 2, amended; subd. 3, added | Contracts for employment of teachers..... | 1910 | 442 | (7) 265 |
| 621 | Compulsory education, blind children..... | 1911 | 710 | (8) 167 |
| 972 | Kindergarten training of blind children... | 1912 | 60 | (9) 174 |
| 973, subd. 2 | Terms of instruction for blind children.... | 1912 | 60 | (9) 175 |
| 973, subd. 2 | Terms of instruction for blind children.... | 1912 | 223 | (9) 175 |
| 979, 980 | Tuition and maintenance of deaf-mute chil- dren | 1910 | 322 | (7) 316 |
| 1031, subds. 2, 3 | Cornell University trustees..... | 1912 | 248 | (9) 175 |
| 1050, 1052, amended; | | | | |
| 1053, added | St. Lawrence University..... | 1910 | 433 | (7) 332 |
| 1075-1078, added | State school of agriculture, Cobleskill.... | 1911 | 852 | (8) 168 |
| 1094, added | Morrisville agricultural school, condemna- tion proceedings authorized..... | 1912 | 27 | (9) 177 |
| 1095, added | Retirement fund for teachers in state insti- tutions | 1910 | 441 | (7) 337 |
| 1095 | Retirement fund for teachers in state insti- tutions | 1912 | 293 | (9) 178 |
| 1096, added | Retirement fund for teachers in state insti- tutions | 1910 | 441 | (7) 337 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|---------|
| EDUCATION LAW—(Continued). | | | | |
| 1097, added | Retirement fund for teachers in state insti- tutions | 1910 | 441 | (7) 337 |
| 1097 | Retirement fund for teachers in state insti- tutions | 1912 | 293 | (9) 178 |
| 1098, added | Retirement fund for teachers in state insti- tutions | 1910 | 441 | (7) 338 |
| 1098 | Retirement fund for teachers in state insti- tutions | 1912 | 293 | (9) 178 |
| 1099, added | Retirement fund for teachers in state insti- tutions | 1910 | 441 | (7) 338 |
| 1100-1108, 1108a, 1109, 1109a, 1109b, added | State teachers' retirement fund..... | 1911 | 449 | (8) 171 |
| 1118 | Establishment of county libraries..... | 1911 | 815 | (8) 178 |
| 1163 | Appellate division, first department, law library | 1911 | 832 | (8) 179 |
| 1166 | Supreme court library, New York city.... | 1911 | 832 | (8) 179 |
| 1177 | Supreme court library, Buffalo..... | 1911 | 58 | (8) 180 |
| 1180, added | Supreme court library, Queens county.... | 1911 | 557 | (8) 180 |
| 1180, added | New York city court, law library..... | 1911 | 824 | (8) 181 |
| Art. 45a (§§ 1185-1188), added | State school of agriculture on Long Island. | 1912 | 319 | (9) 173 |
| ELECTION LAW: | | | | |
| (L. 1909, ch. 22, constituting cons. laws, ch. 17.) | | | | |
| Schedule of articles | Generally | 1911 | 891 | (8) 183 |
| Art. 1, schedule of sections | Generally | 1911 | 891 | (8) 184 |
| Art. 2, tit. 2 | Definitions | 1911 | 649 | (8) 186 |
| 2, added | Definitions | 1911 | 649 | (8) 184 |
| 2, added | Application of certain articles..... | 1911 | 891 | (8) 184 |
| 2 renumbered 3, and amended | Definitions | 1911 | 891 | (8) 184 |
| 2, subd. 8 | Party, defined | 1911 | 872 | (8) 185 |
| 2, subd. 13 | "Independent body," defined..... | 1911 | 872 | (8) 185 |
| 3, repealed | Notice of primary..... | 1911 | 891 | (8) 186 |
| Art. 2, schedule of sections | Enrollment of voters..... | 1911 | 891 | (8) 186 |
| 4, repealed | Organization and conduct of primaries.... | 1911 | 891 | (8) 186 |
| 5, repealed | Qualifications of voters at primaries..... | 1911 | 891 | (8) 186 |
| 6, repealed | Duties of chairman of primary..... | 1911 | 891 | (8) 186 |
| 7, repealed | Watchers; canvass of votes at primary.... | 1911 | 891 | (8) 186 |
| 9, added | Delivery of enrollment blanks, registration not personal | 1911 | 891 | (8) 190 |
| 13, added | Certification and secrecy of enrollment, reg- istration not personal..... | 1911 | 891 | (8) 192 |
| 14a, added | Correction of enrollment lists..... | 1912 | 52 | (9) 181 |
| 15, added | Enrollment in 1911..... | 1911 | 891 | (8) 193 |
| 20, repealed | Application of art. 3..... | 1911 | 891 | (8) 199 |
| 21, repealed | Definitions and construction..... | 1911 | 649 | (8) 199 |
| 22 renumbered 4, and amended | Delivery of enrollment books..... | 1911 | 891 | (8) 186 |
| 23 renumbered 5, and amended | Enrollment books | 1911 | 891 | (8) 186 |
| 24, repealed | Enrollment books, certain cities..... | 1911 | 891 | (8) 199 |
| 25 renumbered 6, and amended | Voting booths and enrollment boxes..... | 1911 | 891 | (8) 186 |
| 26 renumbered 7, and amended | Enrollment blanks, and envelopes..... | 1911 | 891 | (8) 186 |
| 27 renumbered 8, and amended | Delivery of enrollment blanks..... | 1911 | 891 | (8) 189 |

TABLE OF LAWS AMENDED OR REPEALED.

555

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|----------------------------------|---|-------|---------------|----------|
| ELECTION LAW—(Continued). | | | | |
| 28 renumbered 10, and amended | Enrollment | 1911 | 891 | (8) 190 |
| 29 renumbered 11, and amended | Enrollment boxes | 1911 | 891 | (8) 191 |
| 30 renumbered 12, and amended | Certification and secrecy of enrollment, reg- istration personal | 1911 | 891 | (8) 191 |
| 31 renumbered 14, and amended | Opening of enrollment box..... | 1911 | 891 | (8) 192 |
| 32, repealed | Special enrollment | 1911 | 891 | (8) 199 |
| 33, repealed | Special enrollment for annexed territory.. | 1911 | 891 | (8) 199 |
| 34, repealed | Special enrollment upon becoming of age.. | 1911 | 891 | (8) 199 |
| Art. 3, schedule of sections | Party organization | 1911 | 891 | (8) 200 |
| 35, repealed | Special enrollment after moving..... | 1911 | 891 | (8) 199 |
| 35, added | Party committees | 1911 | 891 | (8) 200 |
| 36 renumbered 16, and amended | Duplicate enrollment books..... | 1911 | 891 | (8) 194 |
| 36, added | State committee | 1911 | 891 | (8) 200 |
| 36 | State committee | 1912 | 4 | (9) 182 |
| 37 renumbered 17, and amended | Duplicate enrollment books at unofficial primaries | 1911 | 891 | (8) 194 |
| 37, added | Election of committees..... | 1911 | 891 | (8) 201 |
| 37 | Election of committees..... | 1912 | 4 | (9) 183 |
| 38 renumbered 18, and amended | Original enrollment books at official pri- maries | 1911 | 891 | (8) 194 |
| 38, added | Organization and rules of committees..... | 1911 | 891 | (8) 202 |
| 39 renumbered 19, and amended | Right to enroll and vote at primaries..... | 1911 | 891 | (8) 195 |
| 39, added | Review of election of committees..... | 1911 | 891 | (8) 202 |
| 39 | Review of election of committees..... | 1912 | 4 | (9) 183 |
| 40 renumbered 20 | New enrollment books for changed districts | 1911 | 891 | (8) 195 |
| 40, added | Removal of member of committee..... | 1911 | 891 | (8) 202 |
| 41 renumbered 21, and amended | Transcripts of enrollment..... | 1911 | 891 | (8) 195 |
| 42 renumbered 22, and amended | Publication of enrollment..... | 1911 | 891 | (8) 196 |
| 43 renumbered 23, and amended | Judicial review of enrollment..... | 1911 | 891 | (8) 196 |
| 44 renumbered 24, and amended | Correction of enrollment..... | 1911 | 891 | (8) 197 |
| Art. 4, schedule of sections | Generally | 1911 | 891 | (8) 203 |
| 45, repealed | Times and purposes of official primaries... | 1911 | 891 | (8) 199 |
| 45, added | Direct nominations, elections of delegates.. | 1911 | 891 | (8) 203 |
| 45, subd. 4 | Official primary elections..... | 1909 | 240 | (2) 1397 |
| 46, repealed | Congressional primaries | 1911 | 891 | (8) 199 |
| 46, added | Designations by party committees..... | 1911 | 891 | (8) 204 |
| 47 renumbered 73, and amended | Expense of official primaries..... | 1911 | 891 | (8) 218 |
| 47, added | Meetings of committees for designations... | 1911 | 891 | (8) 205 |
| 48 renumbered 74, and amended | Primary districts, officers and polling places | 1911 | 891 | (8) 218 |
| 48, added | Designation by petition..... | 1911 | 891 | (8) 205 |
| 49 renumbered 75, and amended | Notice of official primary..... | 1911 | 891 | (8) 219 |
| 49, added | Filing of designations..... | 1911 | 891 | (8) 207 |
| 50 renumbered 92, and amended | Unofficial primaries | 1911 | 891 | (8) 230 |
| 50, added | Declinations | 1911 | 891 | (8) 207 |
| 51 renumbered 76 | Restrictions as to place of primaries..... | 1911 | 891 | (8) 219 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--------------------------------------|--|-------|----------|----------|
| ELECTION LAW—(Continued). | | | | |
| 51, added | Certification by secretary of state..... | 1911 | 891 | (8) 208 |
| 52, repealed | Primary election officers..... | 1911 | 891 | (8) 199 |
| 52, added | Vacancies how filled..... | 1911 | 891 | (8) 208 |
| 53, repealed | Appointment and removal, primary election officers | 1911 | 891 | (8) 199 |
| 53, added | Delegates to national conventions..... | 1911 | 891 | (8) 209 |
| 53 | Delegates to national conventions..... | 1912 | 4 | (9) 184 |
| 54, repealed | Chairman; inspectors; oath..... | 1911 | 891 | (8) 199 |
| 54, added | Presidential electors | 1911 | 891 | (8) 210 |
| 55, repealed | Ballots, booths and supplies..... | 1911 | 891 | (8) 199 |
| 55, added | Existing committees continued..... | 1911 | 891 | (8) 210 |
| 55 | Existing committees continued..... | 1912 | 4 | (9) 184 |
| 56, repealed | Voting at official primary elections..... | 1911 | 891 | (8) 199 |
| 56, added | Contest; judicial review..... | 1911 | 891 | (8) 210 |
| 57 renumbered | | | | |
| 72 | Challenges at primaries..... | 1911 | 891 | (8) 217 |
| 57, added | Emblems | 1911 | 891 | (8) 212 |
| 58 renumbered | | | | |
| 83, and amended | Persons within guard-rail..... | 1911 | 891 | (8) 224 |
| 58, added | Official primary ballot..... | 1911 | 891 | (8) 212 |
| 59 renumbered | | | | |
| 84, and amended | Watchers; challengers; electioneering.... | 1911 | 891 | (8) 224 |
| 60 renumbered | | | | |
| 85, and amended | Canvass of votes..... | 1911 | 891 | (8) 224 |
| 61 | Proclamation of result..... | 1909 | 240 | (2) 1405 |
| 61 renumbered | | | | |
| 87, and amended | Proclamation of result..... | 1911 | 891 | (8) 228 |
| 62 renumbered | | | | |
| 88, and amended | Certificates of election; preservation of ballots | 1911 | 891 | (8) 228 |
| 63, repealed | Canvass, statement of result..... | 1911 | 891 | (8) 199 |
| 64, repealed | Committees; rules and regulations of parties | 1911 | 891 | (8) 199 |
| 65, repealed | Organization of committees..... | 1911 | 891 | (8) 199 |
| 66 renumbered | | | | |
| 111, and amended | Apportionment of delegates..... | 1911 | 891 | (8) 232 |
| 67 renumbered | | | | |
| 112, and amended | Organization of conventions..... | 1911 | 891 | (8) 232 |
| 68, repealed | Contested seats | 1911 | 891 | (8) 199 |
| 69, repealed | Substitution of delegates..... | 1911 | 891 | (8) 199 |
| Art. 4a, schedule of sections, added | Conduct of primary elections..... | 1911 | 891 | (8) 214 |
| 70, repealed | Jurisdiction of courts..... | 1911 | 891 | (8) 199 |
| 70, added | Organization and conduct of official primaries | 1911 | 891 | (8) 217 |
| 71, repealed | Direct nomination at primary elections.... | 1911 | 891 | (8) 199 |
| 71, added | Qualifications of voters at official primaries | 1911 | 891 | (8) 217 |
| 72, repealed | Application of art. 3 to political parties.... | 1911 | 891 | (8) 199 |
| 73, repealed | Application of art. 3 to certain cities..... | 1911 | 891 | (8) 199 |
| 74 renumbered | | | | |
| 94, and amended | Perjury | 1911 | 891 | (8) 231 |
| 77, added | Vacancies, boards of primary election officers | 1911 | 891 | (8) 220 |
| 78, added | Primary poll-clerks | 1911 | 891 | (8) 220 |
| 79, added | Ballots, booths and supplies..... | 1911 | 891 | (8) 221 |
| 80, added | Delivery of ballots and manner of voting.. | 1911 | 891 | (8) 222 |
| 81, added | Unofficial ballots at primary elections..... | 1911 | 891 | (8) 223 |
| 82, added | Preparation of ballots by voters..... | 1911 | 891 | (8) 223 |
| 86, added | Intent of voters..... | 1911 | 891 | (8) 226 |
| 89, added | Canvass; certificates of nomination or election | 1911 | 891 | (8) 229 |

TABLE OF LAWS AMENDED OR REPEALED.

557

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|---|-------|----------|---------|
| ELECTION LAW—(Continued). | | | | |
| 90, repealed | Territory excepted from art. 4..... | 1911 | 891 | (8) 203 |
| 90, added | Vacancies; determination of the vote..... | 1911 | 891 | (8) 230 |
| 91, repealed | Application of art. 4..... | 1911 | 891 | (8) 203 |
| 91, added | Party nominations for special elections and vacancies | 1911 | 891 | (8) 230 |
| 92, repealed | Enrollment books | 1911 | 891 | (8) 203 |
| 93, repealed | Entries in enrollment books..... | 1911 | 891 | (8) 203 |
| 93, added | Penalty for violation of certain provisions.. | 1911 | 891 | (8) 231 |
| 94, repealed | Special enrollments | 1911 | 891 | (8) 203 |
| 95, repealed | Special enrollment upon becoming of age.. | 1911 | 891 | (8) 203 |
| 96, repealed | Special enrollment after moving..... | 1911 | 891 | (8) 203 |
| 97, repealed | County clerks to compile enrollment lists.. | 1911 | 891 | (8) 203 |
| 98, repealed | Enrollment lists, when to take effect..... | 1911 | 891 | (8) 203 |
| 99, repealed | Who may be enrolled..... | 1911 | 891 | (8) 203 |
| 100, repealed | Enrollment lists and statements to be pub- lic records | 1911 | 891 | (8) 203 |
| 101, repealed | Conduct of primary elections..... | 1911 | 891 | (8) 203 |
| 102, repealed | Judicial review | 1911 | 891 | (8) 203 |
| 103, repealed | Expenses of enrollment lists..... | 1911 | 891 | (8) 203 |
| 104, repealed | Penalty | 1911 | 891 | (8) 203 |
| Art. 4b, schedule of sections, added | Conventions | 1911 | 891 | (8) 232 |
| 110, added | Vacancy, delegate to convention at official primary | 1911 | 891 | (8) 232 |
| 111, subd. 2 | Election of delegates..... | 1912 | 4 | (9) 185 |
| 113, added | State conventions; credentials of delegates | 1911 | 891 | (8) 233 |
| 114, added | Voting at state conventions..... | 1911 | 891 | (8) 233 |
| 120, repealed | Party nominations | 1911 | 891 | (8) 233 |
| 121 | Party certificates of nominations..... | 1911 | 891 | (8) 233 |
| 122 | Independent nominations | 1911 | 891 | (8) 234 |
| 123 | Independent certificates of nomination.... | 1911 | 649 | (8) 235 |
| 125 | Conflict in names or emblems..... | 1911 | 649 | (8) 236 |
| 127 | Places of filing certificates of nomination.. | 1911 | 891 | (8) 237 |
| 128 | Times of filing certificates of nomination.. | 1911 | 891 | (8) 238 |
| 129 | Certification of nominations by secretary of state | 1911 | 891 | (8) 239 |
| 130 | Publication of nominations..... | 1911 | 891 | (8) 239 |
| 131 | Lists for town clerks and aldermen..... | 1911 | 891 | (8) 240 |
| 133 | Declination of nomination..... | 1911 | 891 | (8) 241 |
| 134 | Objections to certificates of nomination.... | 1911 | 649 | (8) 241 |
| 135 | Filling vacancies in nominations..... | 1911 | 891 | (8) 242 |
| 136 | Certificates of new nominations..... | 1911 | 891 | (8) 243 |
| 137 | Death of candidate; official pastors..... | 1911 | 891 | (8) 243 |
| 150 | Meetings for registration..... | 1911 | 649 | (8) 244 |
| 151, repealed | Additional meetings for registration..... | 1911 | 649 | (8) 244 |
| 152 | Registration | 1910 | 428 | (7) 376 |
| 152 | Registration | 1911 | 649 | (8) 244 |
| 153 | Registration | 1911 | 649 | (8) 245 |
| 153 | Registration | 1911 | 740 | (8) 245 |
| 155 | Registration | 1910 | 428 | (7) 377 |
| 155 | Registration | 1911 | 649 | (8) 246 |
| 156, repealed | Registration | 1911 | 649 | (8) 248 |
| 157-160 | Registration | 1911 | 649 | (8) 248 |
| 161 | Registration for village elections..... | 1910 | 424 | (7) 380 |
| 169 | Challenging applicants for registration.... | 1910 | 428 | (7) 381 |
| 169 | Challenging applicants for registration.... | 1911 | 649 | (8) 252 |
| 170, 171 | Challenging applicants for registration.... | 1911 | 649 | (8) 252 |
| 180 | Custody of registers after election..... | 1911 | 649 | (8) 253 |
| 181 | Certifying number of registered electors.. | 1911 | 649 | (8) 254 |
| Art. 7, tit. | Boards of elections..... | 1911 | 649 | (8) 254 |
| 190 | Boards of elections..... | 1911 | 649 | (8) 254 |
| 190 | Boards of elections..... | 1911 | 740 | (8) 254 |
| 190 | Boards of elections..... | 1912 | 406 | (9) 186 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|----------------------------------|--|-------|----------|-------|
| ELECTION LAW—(Continued). | | | | |
| 191 | Boards of elections, appointment, etc..... | 1911 | 649 (8) | 254 |
| 192 | Boards of elections, organization; reports.. | 1911 | 649 (8) | 255 |
| 193 | Salaries, commissioners of elections..... | 1911 | 649 (8) | 256 |
| 193 | Salaries, commissioners of elections..... | 1912 | 406 (9) | 187 |
| 194 | Commissioners of elections, recommendations for appointment..... | 1911 | 649 (8) | 256 |
| 195 | Boards of elections, vacancies..... | 1911 | 649 (8) | 257 |
| 196 | Boards of elections, bi-partisan..... | 1911 | 649 (8) | 257 |
| 197 | Boards of elections, employees..... | 1911 | 649 (8) | 257 |
| 197 | Appointment of employees..... | 1912 | 406 (9) | 187 |
| 198 | Boards of elections, offices..... | 1911 | 649 (8) | 258 |
| 200 | Boards of elections, expenses..... | 1911 | 649 (8) | 258 |
| 202, added | Custodian of primary records..... | 1911 | 649 (8) | 259 |
| 203, added | Official seal of board of election..... | 1911 | 649 (8) | 259 |
| 204, added | Filing statements of canvass, etc..... | 1911 | 649 (8) | 259 |
| 205, added | Notices of elections..... | 1911 | 649 (8) | 259 |
| 206, added | Transfer of records..... | 1911 | 649 (8) | 259 |
| 207, added | Boards of elections, rules and regulations.. | 1911 | 649 (8) | 260 |
| 208, added | Records | 1911 | 649 (8) | 260 |
| 210-215, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 216 | Seal for commissioner of elections, Erie county | 1910 | 433 (7) | 382 |
| 216, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 217, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 218 | Commissioner of elections, Erie county... | 1910 | 431 (7) | 382 |
| 218, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 219 | Commissioner of elections, Erie county... | 1910 | 431 (7) | 383 |
| 219, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 220, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 221 | Commissioner of elections, Erie county... | 1910 | 431 (7) | 384 |
| 221, repealed | Commissioner of elections, Erie county... | 1911 | 649 (8) | 260 |
| 230-242, repealed | Commissioner of elections, Monroe county. | 1911 | 649 (8) | 260 |
| 250-252, repealed | Commissioner of elections, Onondaga county | 1911 | 649 (8) | 260 |
| 253 | Official seal of commissioner of elections, Onondaga county | 1910 | 172 (7) | 384 |
| 253, repealed | Commissioner of elections, Onondaga county | 1911 | 649 (8) | 260 |
| 254-260, repealed | Commissioner of elections, Onondaga county | 1911 | 649 (8) | 260 |
| 270-281, repealed | Commissioner of elections, Westchester county | 1911 | 649 (8) | 260 |
| 291 | Time of opening and closing polls..... | 1911 | 649 (8) | 260 |
| 292 | Vacancies in elective offices..... | 1911 | 891 (8) | 261 |
| 293 | Notices of elections..... | 1911 | 649 (8) | 261 |
| 294 | Notice of submission of proposed constitutional amendments and propositions..... | 1910 | 446 (7) | 385 |
| 299 | Designation of places for registry and voting | 1910 | 428 (7) | 386 |
| 305 | Election officers, examination as to qualifications | 1911 | 649 (8) | 262 |
| 316 | Ballot boxes | 1911 | 649 (8) | 262 |
| 331 | Form of general ballots..... | 1911 | 649 (8) | 263 |
| 331 | Form of general ballots..... | 1911 | 872 (8) | 263 |
| 341 | Providing ballots and stationery..... | 1911 | 649 (8) | 267 |
| 352 | Watchers | 1910 | 428 (7) | 388 |
| 352 | Watchers; challengers; electioneering..... | 1911 | 649 (8) | 268 |
| 355 | Poll clerks, general duties..... | 1911 | 649 (8) | 269 |
| 355, subd. 2 | Comparison of signatures..... | 1910 | 428 (7) | 389 |
| 358 | Preparation of ballots by voters..... | 1911 | 296 (8) | 271 |
| 361 | Challenges | 1910 | 428 (7) | 392 |
| 361 | Challenges | 1911 | 649 (8) | 272 |

TABLE OF LAWS AMENDED OR REPEALED.

559

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|---|-------|----------|----------|
| ELECTION LAW—(Continued). | | | | |
| 362 | Challenges | 1910 | 428 | (7) 392 |
| 362 | Preliminary oath | 1911 | 649 | (8) 273 |
| 368 | Intent of voters..... | 1911 | 296 | (8) 274 |
| 368 | Intent of electors..... | 1911 | 649 | (8) 274 |
| 372 | Statement of canvass, delivery to police... | 1911 | 649 | (8) 276 |
| 377 | Filing election papers..... | 1911 | 649 | (8) 276 |
| 378 | Filing of papers, New York city..... | 1911 | 274 | (8) 277 |
| 378 | Filing of papers, New York city..... | 1911 | 649 | (8) 277 |
| 379, repealed | Metropolitan district, additional require- ments | 1911 | 649 | (8) 278 |
| 392 | Voting machines, requirements..... | 1911 | 649 | (8) 278 |
| 397 | Voting machines, form of ballots..... | 1911 | 649 | (8) 279 |
| 400 | Preparation of voting machine..... | 1911 | 649 | (8) 279 |
| 401 | Voting machines, instruction of election officers | 1911 | 649 | (8) 281 |
| 413 | Canvass and proclamation of vote..... | 1909 | 240 | (2) 1563 |
| 413 | Voting machines, canvass of vote..... | 1911 | 649 | (8) 281 |
| 415 | Voting machines | 1909 | 465 | (2) 1565 |
| 419 | Change in boundaries of election districts.. | 1911 | 542 | (8) 283 |
| 430 | County board of canvassers..... | 1910 | 432 | (7) 394 |
| Art. 18, tit. | State superintendent of elections..... | 1911 | 649 | (8) 283 |
| 470, repealed | Metropolitan elections district..... | 1911 | 649 | (8) 283 |
| 471 | State superintendent of elections..... | 1909 | 240 | (2) 1586 |
| 471 | State superintendents of elections..... | 1911 | 649 | (8) 283 |
| 472-479 | State superintendents of elections, deputies; powers and duties..... | 1911 | 649 | (8) 284 |
| 480 | Reports by hotel keepers..... | 1911 | 649 | (8) 287 |
| 481, 482 | Affidavits by hotel keepers holding liquor licenses | 1911 | 649 | (8) 288 |
| 483 | Reports by police and certain departments. | 1911 | 649 | (8) 289 |
| 484 | Lists of voters in lodging-houses, etc..... | 1911 | 649 | (8) 290 |
| 485 | Card lists of registered electors..... | 1911 | 649 | (8) 291 |
| 486 | Removal of deputies..... | 1911 | 649 | (8) 291 |
| 487 | Salaries and expenses, superintendents of elections and employees..... | 1911 | 649 | (8) 292 |
| 488 | Annual report, state superintendents of elections | 1911 | 649 | (8) 292 |
| 489, added | Authority of state superintendent of elec- tions | 1911 | 891 | (8) 292 |
| 518 | Application of provisions of penal law.... | 1909 | 240 | (2) 1607 |
| 540-542, 544, 546 | Expenditure of money at primary elections. | 1910 | 429 | (7) 395 |
| 548 | Statements of campaign receipts and ex- penses | 1910 | 438 | (7) 397 |
| 562, added | Party funds not to be expended for pri- mary purposes | 1911 | 891 | (8) 293 |
| EXECUTIVE LAW: | | | | |
| (L. 1909, ch. 23, constituting cons. laws, ch. 18.) | | | | |
| 20 | Salary of secretary of state..... | 1910 | 691 | (7) 399 |
| 40 | Salary of comptroller..... | 1910 | 691 | (7) 399 |
| 41 | Deputies to the comptroller..... | 1910 | 189 | (7) 399 |
| 41 | Deputies to the comptroller..... | 1911 | 568 | (8) 297 |
| 43 | Supervision of money paid into court..... | 1910 | 193 | (7) 399 |
| 45, added | Posting of bulletins by comptroller..... | 1910 | 159 | (7) 400 |
| 45, added | Examiners appointed by comptroller..... | 1911 | 213 | (8) 297 |
| 50 | Salary of state treasurer..... | 1910 | 691 | (7) 400 |
| 52 | Deputy state treasurer..... | 1909 | 268 | (2) 1650 |
| 60 | Salary of attorney-general..... | 1910 | 691 | (7) 401 |
| 60 | Clerk hire and expenses of attorney-general | 1911 | 204 | (8) 297 |
| 61 | Attorney-general, deputies | 1911 | 204 | (8) 297 |
| 62, subd. 2 | Attorney-general, expenses | 1911 | 14 | (8) 297 |
| 65 | Counsel employed by attorney-general.... | 1911 | 791 | (8) 298 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|--|-------|----------|----------|
| EXECUTIVE LAW—(Continued). | | | | |
| 70 | Salary of state engineer..... | 1910 | 691 | (7) 401 |
| 100 | State superintendent of weights and measures | 1910 | 698 | (7) 401 |
| 104 | Fees paid by notaries public..... | 1909 | 240 | (2) 1664 |
| 105 | Notaries public | 1911 | 668 | (8) 298 |
| FOREST, FISH AND GAME LAW: | | | | |
| (L. 1909, ch. 24, constituting cons. laws, ch. 19.) | | | | |
| <i>(All parts of the forest, fish and game law, not heretofore repealed, with the exception of § 113, were repealed by L. 1912, chaps. 318 and 444. For status of § 113 see foot note, L. 1909, p. 1136.)</i> | | | | |
| 2 | Commissioner | 1909 | 474 | (2) 1694 |
| 4 | Office force | 1909 | 474 | (2) 1695 |
| 6 | Disposal of game and fish seized..... | 1911 | 488 | (8) 311 |
| 8 | Summary of law..... | 1909 | 533 | (2) 1696 |
| 8 | Compilation and distribution of law..... | 1911 | 423 | (8) 311 |
| 11 | Game protectors | 1909 | 474 | (2) 1697 |
| 11 | Number of game protectors..... | 1910 | 675 | (7) 404 |
| 13 | Compensation of protectors..... | 1909 | 474 | (2) 1697 |
| 13 | Compensation of protectors..... | 1910 | 657 | (7) 404 |
| 14 | Powers of protectors..... | 1909 | 474 | (2) 1698 |
| 19 | Actions for penalties..... | 1911 | 835 | (8) 311 |
| 20 | Costs, actions by the people..... | 1911 | 835 | (8) 312 |
| 21 | Moneys recovered, actions by the people... | 1911 | 835 | (8) 312 |
| 32a, added | Game and bird refuges..... | 1910 | 657 | (7) 405 |
| 37 | Boundaries of Saint Lawrence reservation. | 1910 | 313 | (7) 405 |
| 40 | Powers of commissioner..... | 1909 | 474 | (2) 1708 |
| 40 | Powers of commissioner..... | 1910 | 657 | (7) 405 |
| 40, subd. 6 | Compromise of actions, approval by governor | 1911 | 835 | (8) 313 |
| 47 | Description of land appropriated for forest preserve | 1911 | 835 | (8) 313 |
| 56 | Cutting timber | 1909 | 474 | (2) 1715 |
| 67 | Auditor of fire accounts and fire inspections | 1909 | 474 | (2) 1717 |
| 68 | Fire patrol by railroads..... | 1909 | 474 | (2) 1718 |
| 69 | Fire districts and patrols..... | 1909 | 474 | (2) 1719 |
| 69 | Fire districts and patrols..... | 1910 | 657 | (7) 407 |
| 70 | Superintendents of fire..... | 1909 | 474 | (2) 1720 |
| 71 | Compensation of fire patrolmen and fire fighters | 1909 | 474 | (2) 1721 |
| 72 | Railroads in forest lands..... | 1910 | 476 | (7) 407 |
| 73 | Fires to clear land..... | 1909 | 474 | (2) 1723 |
| 73 | Fires to clear land..... | 1910 | 657 | (7) 408 |
| 73 | Fires to clear land..... | 1911 | 529 | (8) 314 |
| 74 | Forest fires prohibited..... | 1909 | 474 | (2) 1723 |
| 74 | Forest fires prohibited..... | 1910 | 657 | (7) 409 |
| 75a, added | Suspension of open season..... | 1909 | 474 | (2) 1724 |
| 75b, added | Statistics of forest products..... | 1909 | 474 | (2) 1725 |
| 76 | Deer; open season | 1909 | 474 | (2) 1725 |
| 76 | Deer; open season | 1910 | 657 | (7) 410 |
| 76 | Deer; open season | 1911 | 533 | (8) 314 |
| 77 | Possession of deer or venison..... | 1909 | 474 | (2) 1726 |
| 77 | Possession of deer or venison..... | 1910 | 657 | (7) 410 |
| 77 | Possession of deer or venison..... | 1911 | 438 | (8) 315 |
| 78 | Transportation of deer..... | 1909 | 474 | (2) 1727 |
| 78 | Transportation of deer..... | 1910 | 657 | (7) 411 |
| 78a, added | Breeding and sale of elk and deer..... | 1911 | 438 | (8) 315 |
| 80 | Wild moose, elk, caribou and antelope.... | 1911 | 438 | (8) 317 |
| 81 | Black and gray squirrels..... | 1910 | 657 | (7) 411 |
| 81 | Black and gray squirrels..... | 1911 | 438 | (8) 317 |

TABLE OF LAWS AMENDED OR REPEALED.

561

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|---|-------|---------------|----------|
| FOREST, FISH AND GAME LAW—(Continued). | | | | |
| 81 | Black and gray squirrels..... | 1911 | 592 | (8) 317 |
| 82 | Hares and rabbits..... | 1909 | 240 | (2) 1728 |
| 82 | Hares and rabbits..... | 1909 | 474 | (2) 1728 |
| 82 | Hares and rabbits..... | 1910 | 657 | (7) 411 |
| 82 | Hares and rabbits..... | 1911 | 438 | (8) 318 |
| 82 | Hares and rabbits..... | 1911 | 635 | (8) 318 |
| 84 | Mink, skunk, muskrat and sable..... | 1909 | 474 | (2) 1729 |
| 84 | Mink, skunk, muskrat and sable..... | 1910 | 657 | (7) 412 |
| 84 | Mink, skunk, muskrat and sable..... | 1911 | 238 | (8) 318 |
| 84a, added | Propagation of skunks..... | 1911 | 238 | (8) 318 |
| 85a, added | Sale of game prohibited..... | 1911 | 438 | (8) 319 |
| 86 | Penalties..... | 1911 | 438 | (8) 319 |
| 87 | Wild fowl; open season..... | 1910 | 657 | (7) 412 |
| 87 | Wild fowl; open season..... | 1911 | 438 | (8) 320 |
| 88 | Ducks, geese, brant and swan..... | 1909 | 474 | (2) 1730 |
| 88 | Manner of killing wild fowl..... | 1910 | 657 | (7) 413 |
| 88 | Manner of killing wild fowl..... | 1911 | 438 | (8) 320 |
| 89 | Quail; open season..... | 1911 | 438 | (8) 320 |
| 90 | Woodcock; open season..... | 1911 | 438 | (8) 320 |
| 91 | Grouse; open season..... | 1909 | 474 | (2) 1731 |
| 91 | Grouse; open season..... | 1911 | 438 | (8) 320 |
| 92 | Grouse, woodcock and quail, sale prohibited | 1909 | 474 | (2) 1731 |
| 92 | Grouse, woodcock and quail not to be bought | 1910 | 657 | (7) 413 |
| 92, repealed | Grouse, woodcock and quail not to be sold or bought..... | 1911 | 438 | (8) 321 |
| 92, added | Sale of dead game and song birds prohib- ited..... | 1911 | 438 | (8) 321 |
| 93 | Woodcock, grouse and quail not to be pos- sessed..... | 1910 | 657 | (7) 414 |
| 93 | Woodcock, grouse and quail not to be pos- sessed..... | 1910 | 664 | (7) 414 |
| 93 | Woodcock, grouse and quail not to be pos- sessed..... | 1911 | 438 | (8) 321 |
| 96 | Pheasants..... | 1910 | 657 | (7) 414 |
| 96 | Pheasants..... | 1911 | 170 | (8) 321 |
| 96 | Pheasants..... | 1911 | 627 | (8) 321 |
| 96a, added | Breeding of pheasants, mallard and black ducks..... | 1911 | 438 | (8) 322 |
| 96b, added | Mammals and birds, importation and sale.. | 1911 | 438 | (8) 323 |
| 96c, added | Fees for affixing tags..... | 1911 | 438 | (8) 324 |
| 98 | Wild birds protected..... | 1909 | 474 | (2) 1734 |
| 98 | Sale of plumage of birds..... | 1910 | 256 | (7) 414 |
| 103 | Birds and game not to be transported..... | 1910 | 657 | (7) 415 |
| 104 | Hunting license..... | 1911 | 854 | (8) 324 |
| 105 | Penalties..... | 1910 | 657 | (7) 415 |
| 106 | Trout; open season..... | 1909 | 474 | (2) 1739 |
| 106 | Trout; open season..... | 1910 | 657 | (7) 416 |
| 106 | Trout; open season..... | 1911 | 188 | (8) 326 |
| 106 | Trout; open season..... | 1911 | 592 | (8) 326 |
| 109 | Lake trout and whitefish; open season..... | 1909 | 474 | (2) 1740 |
| 109 | Lake trout and whitefish; open season..... | 1910 | 657 | (7) 416 |
| 109 | Lake trout and whitefish; open season..... | 1910 | 663 | (7) 416 |
| 100 | Lake trout and whitefish; open season..... | 1911 | 582 | (8) 327 |
| 115 | Black bass..... | 1910 | 657 | (7) 417 |
| 117 | Pickeral and pike..... | 1909 | 474 | (2) 1742 |
| 117 | Blue pike, Lake Ontario..... | 1911 | 312 | (8) 327 |
| 122 | Tip-ups..... | 1910 | 657 | (7) 417 |
| 123 | Eel weirs and pots..... | 1910 | 657 | (7) 417 |
| 124 | Taking minnows for bait..... | 1909 | 474 | (2) 1744 |
| 124 | Taking minnows for bait..... | 1911 | 592 | (8) 328 |
| 126 | Frostfish and whitefish..... | 1909 | 474 | (2) 1745 |
| 126 | Frostfish and whitefish taken with nets.... | 1910 | 657 | (7) 418 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|----------|
| FOREST, FISH AND GAME LAW—(Continued). | | | | |
| 128 | Thumping, Dutchess county..... | 1911 | 591 | (8) 328 |
| 134 | Obstruction of streams..... | 1909 | 474 | (2) 1746 |
| 135 | Explosives prohibited | 1910 | 657 | (7) 418 |
| 143 | Penalties | 1910 | 657 | (7) 418 |
| 146 | Nets in Chaumont bay and adjacent waters | 1909 | 474 | (2) 1751 |
| 147 | Nets in Wappinger's creek..... | 1910 | 657 | (7) 419 |
| 147 | Nets in Hudson and Delaware rivers..... | 1911 | 591 | (8) 328 |
| 150 | Fishing in Seneca and Cayuga lakes..... | 1909 | 474 | (2) 1752 |
| 150 | Spearing in Cayuga lake..... | 1911 | 299 | (8) 329 |
| 150 | Fishing in Seneca and Cayuga lakes..... | 1911 | 582 | (8) 329 |
| 151 | Fishing in Otsego lake..... | 1910 | 657 | (7) 419 |
| 152 | Fishing in Chautauqua and Cattaraugus counties | 1909 | 474 | (2) 1753 |
| 152 | Fishing in Chautauqua and Cattaraugus counties | 1911 | 592 | (8) 329 |
| 153 | Spearing, hooking and set lines..... | 1909 | 474 | (2) 1753 |
| 153 | Spearing, hooking and set lines..... | 1910 | 657 | (7) 420 |
| 153 | Spearing, hooking and set lines..... | 1911 | 580 | (8) 329 |
| 153 | Spearing, hooking and set lines..... | 1911 | 590 | (8) 331 |
| 154 | Warren, Essex, Washington and Saratoga counties, certain waters..... | 1910 | 657 | (7) 421 |
| 154 | Pike-perch and pike and perch, Lake George | 1911 | 530 | (8) 332 |
| 154 | Fishing in Lake George..... | 1911 | 636 | (8) 332 |
| 154a, added | Open season, certain fish, Schuyler county. | 1911 | 377 | (8) 332 |
| 154b, added | Spearing suckers, Schuyler and Chemung counties | 1911 | 378 | (8) 333 |
| 154b, added | Fishing with set lines, Schuyler county.... | 1911 | 589 | (8) 333 |
| 157 | Suckers, Sullivan county..... | 1910 | 655 | (7) 421 |
| 157 | Suckers, Ulster county..... | 1911 | 508 | (8) 333 |
| 168 | Deer, Long Island district..... | 1910 | 657 | (7) 422 |
| 170 | Wild fowl, Long Island district..... | 1910 | 657 | (7) 422 |
| 170a, repealed | Brant, Long Island district..... | 1910 | 657 | (7) 422 |
| 174a | Pheasants and woodcock on Robbins and Gardners islands | 1910 | 656 | (7) 422 |
| 184 | Superintendent of marine fisheries..... | 1909 | 240 | (2) 1764 |
| 187, repealed | Duties of superintendent of marine fisheries | 1911 | 647 | (8) 333 |
| 188, repealed | Reports of superintendent of marine fisher- ies | 1911 | 647 | (8) 333 |
| 195-204, repealed | Shellfish | 1911 | 647 | (8) 333 |
| 207, repealed | Polluting waters | 1911 | 647 | (8) 333 |
| 208, repealed | Garbage, Long Island sound..... | 1911 | 647 | (8) 333 |
| 210-215, repealed | Shellfish grounds; oyster beds..... | 1911 | 647 | (8) 333 |
| 224 | Leases of land for shellfish culture..... | 1909 | 240 | (2) 1775 |
| 224, repealed | Lands for shellfish culture..... | 1911 | 647 | (8) 333 |
| 240 | Definitions | 1909 | 474 | (2) 1777 |
| 240, subd. 14 | Open season, defined..... | 1911 | 171 | (8) 333 |
| 240, subd. 18, added | Plumage of birds, defined..... | 1910 | 256 | (7) 422 |
| 241 | Storage in close season..... | 1911 | 438 | (8) 333 |
| GENERAL BUSINESS LAW: | | | | |
| (L. 1909, ch. 25, constituting cons. laws, ch. 20.) | | | | |
| 2-4 | Standard of weights and measures..... | 1910 | 187 | (7) 424 |
| 5 | Units of capacity of measure..... | 1909 | 414 | (2) 1802 |
| 5a, 5b, added | Milk and cream bottles..... | 1910 | 470 | (7) 425 |
| 8 | Number of pounds to the bushel..... | 1910 | 187 | (7) 425 |
| 9, repealed | Barrels of apples, quinces, pears and pota- toes | 1912 | 81 | (9) 194 |
| 11 | State superintendent of weights and meas- ures, duties | 1910 | 187 | (7) 426 |
| 13 | County sealers | 1910 | 187 | (7) 426 |

TABLE OF LAWS AMENDED OR REPEALED.

563

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|----------|
| GENERAL BUSINESS LAW—(Continued). | | | | |
| 14, repealed 15 renumbered | Town sealers | 1910 | 187 | (7) 427 |
| 14, and amended 16 renumbered | City sealers | 1910 | 187 | (7) 427 |
| 15, and amended | Weights and measures to be sealed..... | 1910 | 187 | (7) 428 |
| 16, added | Methods of sale of certain commodities.... | 1912 | 81 | (9) 194 |
| 16a, added | Prescribed sizes of containers..... | 1912 | 81 | (9) 194 |
| 17, repealed | Standards in possession of state superin- tendent | 1910 | 187 | (7) 428 |
| 17, added | Net contents of containers to be indicated.. | 1912 | 81 | (9) 194 |
| 17a, added | Sections not applicable to certain containers | 1912 | 81 | (9) 195 |
| 17b, added | Guaranty of container by wholesaler..... | 1912 | 81 | (9) 195 |
| 17c, added | Definitions | 1912 | 81 | (9) 195 |
| 18, added | Examination of containers; prosecution of violation | 1912 | 81 | (9) 195 |
| 18a, added | Penalties | 1912 | 81 | (9) 196 |
| 20, repealed | Conduct of auction sales..... | 1911 | 571 | (8) 337 |
| 25, added | Private banking | 1910 | 348 | (7) 429 |
| 25 | Private banking | 1911 | 393 | (8) 337 |
| 25, added | Books to be kept by auctioneers..... | 1910 | 640 | (7) 428 |
| 26, added | Private banking | 1910 | 348 | (7) 432 |
| 26, added | Books to be kept by auctioneers..... | 1910 | 640 | (7) 429 |
| 27, added | Private banking | 1910 | 348 | (7) 433 |
| 27 | Private banking | 1911 | 393 | (8) 339 |
| 27, added | Books to be kept by auctioneers..... | 1910 | 640 | (7) 429 |
| 28, added | Private banking | 1910 | 348 | (7) 433 |
| 28 | Private banking | 1911 | 393 | (8) 340 |
| 28, added | Books to be kept by auctioneers..... | 1910 | 640 | (7) 429 |
| 29, added | Private banking | 1910 | 348 | (7) 433 |
| 29a, added | Private banking | 1910 | 348 | (7) 433 |
| 29a | Private banking | 1911 | 393 | (8) 340 |
| 29b, 29c, added | Private banking | 1910 | 348 | (7) 434 |
| 29d, added | Private banking | 1910 | 348 | (7) 435 |
| 29d | Private banking | 1911 | 393 | (8) 341 |
| 29e, added | Private banking | 1910 | 348 | (7) 435 |
| 29e | Private banking | 1911 | 393 | (8) 342 |
| 29f, 29g, added | Private banking | 1910 | 348 | (7) 436 |
| 40 | Pawnbroker's license, certain cities..... | 1909 | 240 | (2) 1812 |
| 41 | Licenses, how obtained; penalty..... | 1909 | 240 | (2) 1812 |
| 70 | Private detectives | 1909 | 529 | (2) 1817 |
| 70 | Private detectives | 1910 | 515 | (7) 436 |
| 71 | Private detectives | 1909 | 529 | (2) 1818 |
| 71 | Private detectives | 1910 | 515 | (7) 437 |
| 72 | Private detectives | 1909 | 529 | (2) 1819 |
| 72 | Private detectives | 1910 | 515 | (7) 439 |
| 73 | Private detectives | 1909 | 529 | (2) 1819 |
| 73 | Private detectives | 1910 | 515 | (7) 439 |
| 73a-73c, added | Private detectives | 1910 | 515 | (7) 440 |
| 74 | Private detectives | 1909 | 529 | (2) 1820 |
| 74 | Private detectives | 1910 | 515 | (7) 441 |
| 74a, 74b, added | Private detectives | 1910 | 515 | (7) 442 |
| 75 | Private detectives | 1909 | 529 | (2) 1821 |
| 75 | Private detectives | 1910 | 515 | (7) 442 |
| 76, added | Private detectives | 1910 | 515 | (7) 443 |
| 85-88, added | Certified shorthand reporters..... | 1911 | 587 | (8) 344 |
| 150, repealed | Ticket agents | 1910 | 348 | (7) 443 |
| 150, repealed | Ticket agents | 1910 | 349 | (7) 443 |
| 150, added | Ticket agents | 1910 | 349 | (7) 443 |
| 150 | License to sell transportation tickets..... | 1911 | 578 | (8) 345 |
| 151, repealed | Ticket agents | 1910 | 348 | (7) 443 |
| 151, repealed | Ticket agents | 1910 | 349 | (7) 443 |
| 151, added | Ticket agents | 1910 | 349 | (7) 444 |
| 152, repealed | Ticket agents | 1910 | 348 | (7) 443 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|---|-------|---------------|----------|
| GENERAL BUSINESS LAW—(Continued). | | | | |
| 152, repealed | Ticket agents | 1910 | 349 | (7) 443 |
| 152, added | Ticket agents | 1910 | 349 | (7) 445 |
| 153, repealed | Ticket agents | 1910 | 348 | (7) 443 |
| 153, repealed | Ticket agents | 1910 | 349 | (7) 443 |
| 153, added | Ticket agents | 1910 | 349 | (7) 445 |
| 154, repealed | Ticket agents | 1910 | 348 | (7) 443 |
| 154, repealed | Ticket agents | 1910 | 349 | (7) 443 |
| 154, added | Ticket agents | 1910 | 349 | (7) 445 |
| Art. 11 | Employment agencies | 1910 | 700 | (7) 446 |
| 191, subd. 3 | Relicensing of employment agencies..... | 1912 | 261 | (9) 197 |
| 207 | Inn-keeper's lien | 1910 | 215 | (7) 458 |
| 208 | Inn-keeper's lien | 1910 | 215 | (7) 458 |
| 209, added | Inn-keeper's lien | 1910 | 215 | (7) 459 |
| 209, added | Exhibitions of moving pictures..... | 1911 | 756 | (8) 346 |
| 210-212, added | Exhibitions of moving pictures..... | 1911 | 756 | (8) 346 |
| 341 | Monopolies | 1910 | 633 | (7) 460 |
| 345 | Monopolies | 1910 | 394 | (7) 461 |
| 367, added | Trademarks | 1909 | 475 | (2) 1835 |
| 383-389, 389a, added | Sale of coal, coke and charcoal..... | 1911 | 825 | (8) 348 |
| 391 | Small fruit packages or baskets..... | 1909 | 414 | (2) 1895 |
| GENERAL CITY LAW: | | | | |
| (L. 1909, ch. 26, constituting cons. laws, ch. 21.) | | | | |
| 4, repealed | Filing financial reports with secretary of state | 1910 | 217 | (7) 462 |
| 12 | Money for Memorial day, cities of third class | 1909 | 288 | (2) 1916 |
| 13 | Moneys, how expended..... | 1909 | 288 | (2) 1917 |
| 13a, added | Moneys for annual conference of city off- cials | 1911 | 622 | (8) 351 |
| 17 | Crematories for disposal of garbage..... | 1910 | 467 | (7) 462 |
| 18, added | License to operate moving picture apparatus | 1911 | 252 | (8) 351 |
| 60-68, added | Regulation of plastering..... | 1911 | 156 | (8) 352 |
| Art. 8 (§§ 120- 122) renumbered art. 11a (§§ 165- 167) | Art commission | 1911 | 718 | (8) 353 |
| Art. 8 (§§ 120- 129, 129a-129c), added | Dog license, third class cities..... | 1911 | 718 | (8) 354 |
| 150-160, repealed | Protection of purchasers of coal..... | 1911 | 825 | (8) 357 |
| GENERAL CONSTRUCTION LAW: | | | | |
| (L. 1909, ch. 27, constituting cons. laws, ch. 22.) | | | | |
| 20 | Method of computing time..... | 1910 | 347 | (7) 463 |
| 24 | Columbus day | 1909 | 112 | (7) 463 |
| GENERAL CORPORATION LAW: | | | | |
| (L. 1909, ch. 28, constituting cons. laws, ch. 23.) | | | | |
| Schedule of articles | Receivers | 1909 | 240 | (2) 1963 |
| 6 | Corporate names | 1911 | 638 | (8) 359 |
| 6 | Corporate names | 1912 | 2 | (9) 200 |
| 12 | Property of nonstock corporations..... | 1909 | 276 | (2) 1978 |
| 12 | Property of nonstock corporations..... | 1911 | 581 | (8) 360 |
| 20 | Real estate of foreign corporations..... | 1910 | 63 | (7) 468 |
| 22 | Prohibition of banking powers..... | 1911 | 771 | (8) 361 |
| 38 | Revival of corporate existence..... | 1911 | 63 | (8) 361 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|---|-------|----------|----------|
| GENERAL CORPORATION LAW—(Continued). | | | | |
| 60, 62, 63 | Change of names of certain kinds of corporations | 1910 | 296 | (7) 470 |
| 102 | Service of summons in action to dissolve corporation | 1912 | 204 | (9) 204 |
| 106 | Permanent receiver | 1909 | 240 | (2) 2220 |
| 155 | Notice to creditors by receiver..... | 1909 | 240 | (2) 2033 |
| 158 | Notice of accounting by receiver..... | 1909 | 240 | (2) 2034 |
| 160 | Claims, when barred..... | 1909 | 240 | (2) 2036 |
| 174 | Petition for voluntary dissolution..... | 1909 | 240 | (2) 2039 |
| 178 | Action upon petition..... | 1909 | 240 | (2) 2041 |
| 191 | Permanent receiver | 1909 | 240 | (2) 2045 |
| 225, added | Security of receiver..... | 1909 | 240 | (2) 2050 |
| 226, added | Removal of receiver; new bond..... | 1909 | 240 | (2) 2051 |
| 227, added | Notice to sureties upon accounting..... | 1909 | 240 | (2) 2051 |
| 232 | Receiver's title | 1909 | 240 | (2) 2054 |
| 269 | Notice of final accounting..... | 1909 | 240 | (2) 2072 |
| GENERAL MUNICIPAL LAW: | | | | |
| (L. 1909, ch. 29, constituting cons. laws, ch. 24.) | | | | |
| 6 | Funded debts | 1910 | 677 | (7) 476 |
| 10 | Registry of municipal bonds..... | 1910 | 129 | (7) 476 |
| 21, added | Maximum rate of interest on municipal bonds | 1911 | 573 | (8) 364 |
| 22-29, added | Legalizing bonds or proceedings for issuance | 1911 | 769 | (8) 364 |
| 30 | Financial reports of municipal corporations | 1911 | 544 | (8) 368 |
| 34 | Compensation of examiners of municipal accounts | 1910 | 301 | (7) 477 |
| 72a, added | Acquisition and development of forest lands | 1912 | 74 | (9) 206 |
| 76 | Water rights, certain counties..... | 1909 | 240 | (2) 2133 |
| 88, added | Separate specifications for certain contract work | 1912 | 514 | (9) 208 |
| 126-135, added | Public general hospitals..... | 1910 | 558 | (7) 477 |
| 136-139, 139a, | Colonies for inebriates; boards of inebriety | 1911 | 700 | (8) 369 |
| 139b, added | Trusts for aiding and instructing children. | 1910 | 163 | (7) 483 |
| 140-143, 145 | Volunteer firemen | 1910 | 119 | (7) 485 |
| 200a, added | Certificate of exempt volunteer fireman.... | 1909 | 240 | (2) 2147 |
| HIGHWAY LAW: | | | | |
| (L. 1909, ch. 30, constituting cons. laws, ch. 25.) | | | | |
| 2 | Definition of construction..... | 1911 | 646 | (8) 378 |
| 2 | Definition of construction..... | 1912 | 83 | (9) 210 |
| 3 | Classification of highways..... | 1910 | 567 | (7) 486 |
| 3 | Classification of highways..... | 1912 | 83 | (9) 210 |
| 11 | State commission of highways..... | 1911 | 646 | (8) 378 |
| 12 | State superintendent of highways, oath of office, undertaking | 1911 | 646 | (8) 379 |
| 14 | Salaries and expenses..... | 1911 | 646 | (8) 379 |
| 16 | Division of state; division engineers..... | 1911 | 646 | (8) 380 |
| 17 | Duties of division engineers..... | 1911 | 646 | (8) 380 |
| 21 | Estimate of cost of maintenance of highways | 1912 | 83 | (9) 210 |
| 30 | Expenses of county superintendent..... | 1910 | 567 | (7) 487 |
| 31 | County superintendent | 1910 | 224 | (7) 487 |
| 33 | Duties of district or county superintendent. | 1911 | 646 | (8) 381 |
| 33, subd. 2a, added | Statements of amounts necessary for county roads | 1910 | 567 | (7) 487 |
| 47, subd. 7 | Removal of weeds and brush..... | 1910 | 567 | (7) 488 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|----------------------------------|--|-------|----------|----------|
| HIGHWAY LAW—(Continued). | | | | |
| 53, repealed | Removal of obstruction from ditches, culverts, etc. | 1912 | 83 | (9) 211 |
| 53a, added | Temporary obstruction of highways..... | 1910 | 567 | (7) 488 |
| 54 | Weeds and obstructions..... | 1911 | 151 | (8) 383 |
| 59a, added | Interest on damages for change of grade... | 1910 | 701 | (7) 488 |
| 77 | Closing highways for repair..... | 1911 | 646 | (8) 384 |
| 78, added | Labor system for removing snow..... | 1909 | 488 | (2) 2218 |
| 78 | Labor system for removing snow..... | 1910 | 136 | (7) 489 |
| 79, added | Assessment of labor for removal of snow... | 1909 | 488 | (2) 2219 |
| 79 | Assessment of labor for removal of snow... | 1910 | 136 | (7) 490 |
| 80, added | Lists of persons assessed for removal of snow | 1909 | 488 | (2) 2219 |
| 81, added | Appeals by non-resident; separate assessments; tenants | 1909 | 488 | (2) 2220 |
| 81, added | District foremen; levy of unworked taxes.. | 1910 | 136 | (7) 490 |
| 81 renumbered 82, and amended | Appeals by non-resident; separate assessments; tenants | 1910 | 136 | (7) 491 |
| 120, subd. 1 | State highway, route 1..... | 1911 | 570 | (8) 386 |
| 120, subd. 2 | State highway, route 2..... | 1910 | 648 | (7) 494 |
| 120, subd. 3 | State highway, route 3..... | 1912 | 157 | (9) 212 |
| 120, subd. 3a, added | State highway, route 3a..... | 1911 | 260 | (8) 386 |
| 120, subd. 4 | State highway, route 4..... | 1911 | 96 | (8) 386 |
| 120, subd. 4 | State highway, route 4..... | 1911 | 747 | (8) 386 |
| 120, subd. 4a, added | State highway, route 4a..... | 1911 | 807 | (8) 387 |
| 120, subd. 4b, added | State highway, route 4b..... | 1912 | 474 | (9) 212 |
| 120, subd. 5 | State highway, route 5..... | 1910 | 573 | (7) 494 |
| 120, subd. 5a, added | State highway, route 5a..... | 1911 | 616 | (8) 387 |
| 120, subd. 5b, added | State highway, route 5b..... | 1911 | 784 | (8) 387 |
| 120, subd. 6 | State highway, route 6..... | 1910 | 573 | (7) 495 |
| 120, subd. 6 | State highway, route 6..... | 1911 | 472 | (8) 388 |
| 120, subd. 6a, added | State highway, route 6a..... | 1911 | 660 | (8) 388 |
| 120, subd. 7 | State highway, route 7..... | 1911 | 261 | (8) 389 |
| 120, subd. 7 | State highway, route 7..... | 1911 | 751 | (8) 389 |
| 120, subd. 7a, added | State highway, route 7a..... | 1912 | 183 | (9) 212 |
| 120, subd. 14 | State highway, route 14..... | 1910 | 648 | (7) 495 |
| 120, subd. 15 | State highway, route 15..... | 1911 | 752 | (8) 389 |
| 120, subd. 15 | State highway, route 15..... | 1912 | 473 | (9) 212 |
| 120, subd. 18 | State highway, route 18..... | 1911 | 89 | (8) 389 |
| 120, subd. 23 | State highway, route 23..... | 1910 | 573 | (7) 496 |
| 120, subd. 23a, added | State highway, route 23a..... | 1912 | 535 | (9) 213 |
| 120, subd. 26 | State highway, route 26..... | 1910 | 573 | (7) 496 |
| 120, subd. 30 | State highway, route 30..... | 1910 | 648 | (7) 496 |
| 120, subd. 30 | State highway, route 30..... | 1911 | 716 | (8) 390 |
| 120, subd. 30 | State highway, route 30..... | 1912 | 51 | (9) 213 |
| 120, subd. 30 | State highway, route 30..... | 1912 | 477 | (9) 213 |
| 120, subd. 30a, added | State highway, route 30a..... | 1910 | 650 | (7) 497 |
| 120, subd. 32 | State highway, route 32..... | 1910 | 648 | (7) 497 |
| 120, subd. 32 | State highway, route 32..... | 1911 | 179 | (8) 390 |
| 120, subd. 37 | State highway, route 37..... | 1910 | 648 | (7) 497 |
| 120, subd. 37 | State highway, route 37..... | 1912 | 475 | (9) 214 |
| 120, subd. 37a, added | State highway, route 37a..... | 1912 | 476 | (9) 215 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---------------------------------|--|-------|---------------|-------|
| HIGHWAY LAW—(Continued). | | | | |
| 120, subd. 37a, added | State highway, route 37a..... | 1912 | 542 (9) | 215 |
| 120, subd. 37b, added | State highway, route 37b..... | 1912 | 542 (9) | 215 |
| 120, subd. 38, added | State highway, route 38..... | 1909 | 504 (2) | 2250 |
| 120, subd. 38a, added | State highway, route 38a..... | 1912 | 179 (9) | 215 |
| 120, subd. 39, added | State highway, route 39..... | 1910 | 649 (7) | 497 |
| 120, subd. 39a, added | State highway, route 39a..... | 1911 | 531 (8) | 391 |
| 120, subd. 39b, added | State highway, route 39b..... | 1911 | 662 (8) | 391 |
| 120, subd. 41, added | State highway, route 41..... | 1911 | 395 (8) | 391 |
| 120, subd. 42, added | State highway, route 42..... | 1911 | 614 (8) | 391 |
| 120, subd. 43, added | State highway, route 43..... | 1911 | 166 (8) | 391 |
| 120, subd. 43, added | State highway, route 43..... | 1911 | 259 (8) | 391 |
| 120, subd. 45, added | State highway, route 45..... | 1911 | 356 (8) | 392 |
| 120, subd. 45 | State highway, route 45..... | 1912 | 57 (9) | 215 |
| 120, subd. 46, added | State highway, route 46..... | 1911 | 320 (8) | 392 |
| 121 | Apportionment of mileage..... | 1911 | 646 (8) | 393 |
| 122 | Construction or improvement of county highways | 1912 | 83 (9) | 215 |
| 123 | Preliminary resolution of supervisors..... | 1909 | 487 (2) | 2252 |
| 125 | Maps and plans..... | 1911 | 646 (8) | 393 |
| 126 | Maps and plans..... | 1911 | 646 (8) | 394 |
| 128 | Final resolution of supervisors..... | 1909 | 240 (2) | 2254 |
| 129 | Cost of county highways..... | 1910 | 247 (7) | 498 |
| 129 | Order of construction of county highways.. | 1911 | 646 (8) | 394 |
| 129 | Order of construction of county highways.. | 1912 | 83 (9) | 216 |
| 132 | Contracts for construction or improvement of highways | 1911 | 646 (8) | 395 |
| 133 | Acceptance of state highway..... | 1911 | 646 (8) | 396 |
| 134 | Acceptance of county highway..... | 1911 | 646 (8) | 396 |
| 137 | State roads through cities of third class.... | 1910 | 233 (7) | 499 |
| 137 | County highways through cities of third class | 1911 | 88 (8) | 396 |
| 137 | State and county highways through cities of second class..... | 1912 | 88 (9) | 216 |
| 138 | Connecting highways in cities of third class | 1911 | 88 (8) | 397 |
| 138 | Connecting highways in cities of second class | 1912 | 88 (9) | 217 |
| 138a, added | State and county highways of additional width | 1911 | 375 (8) | 398 |
| 139 | Cost of county highways..... | 1910 | 247 (7) | 499 |
| 139 | Cost of county highways..... | 1912 | 83 (9) | 218 |
| 140 | Cost of county highways..... | 1910 | 247 (7) | 500 |
| 141 | Cost of county highways..... | 1912 | 83 (9) | 218 |
| 142 | County or town may borrow money..... | 1909 | 486 (2) | 2264 |
| 142 | Share of counties and towns for highway improvement | 1910 | 580 (7) | 500 |
| 142 | County or town may borrow money..... | 1912 | 83 (9) | 219 |
| 143, repealed | Cost of county highways..... | 1910 | 247 (7) | 502 |
| 143, added | Expense of constructing highways, cities of second and third class..... | 1912 | 88 (9) | 220 |
| 150 | Railroads on highways..... | 1911 | 646 (8) | 399 |
| 146 | Petition to acquire lands for highways..... | 1911 | 503 (8) | 399 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---------------------------------|--|-------|---------------|----------|
| HIGHWAY LAW—(Continued). | | | | |
| 152 | Duties of commissioners appointed to con- demn lands | 1911 | 503 | (8) 400 |
| 153 | Awards for lands condemned..... | 1911 | 503 | (8) 400 |
| 154 | Commissioners' fees | 1912 | 182 | (9) 220 |
| 155 | Sale of unnecessary portion of highway.... | 1911 | 552 | (8) 401 |
| 158, added | Superintendents of highways for Indian reservations | 1910 | 46 | (7) 502 |
| 159, added | Moneys for highways on Indian reservations | 1910 | 46 | (7) 502 |
| 159 | Highways within Indian reservations..... | 1911 | 646 | (8) 402 |
| 160, added | Maintenance of detours during construction | 1912 | 83 | (9) 221 |
| 170 | Maintenance of state and county highways. | 1911 | 646 | (8) 403 |
| 170 | Maintenance of state and county highways. | 1912 | 83 | (9) 221 |
| 171-175 | Maintenance of state and county highways. | 1912 | 83 | (9) 221 |
| 176 | Liability of state for damages..... | 1910 | 570 | (7) 504 |
| 176 | Liability of state for damages..... | 1912 | 83 | (9) 224 |
| 177 | Maintenance of highways in villages..... | 1911 | 646 | (8) 403 |
| 177, repealed | Maintenance of highways in villages..... | 1912 | 83 | (9) 224 |
| 178 | State's share of maintaining certain county roads | 1910 | 165 | (7) 504 |
| 178 | State's share of maintenance of county roads | 1910 | 567 | (7) 504 |
| 178 | County roads when to become state or county highways | 1911 | 362 | (8) 404 |
| 193 | Application for condemnation commission- ers | 1910 | 344 | (7) 506 |
| 195 | Notice of meeting for laying out highway.. | 1912 | 246 | (9) 225 |
| 200 | Laying out highways..... | 1911 | 624 | (8) 405 |
| 203 | Towns may borrow money for highways... | 1911 | 498 | (8) 406 |
| 263, added | Abolition of toll bridges..... | 1909 | 146 | (2) 2328 |
| 263 | Resolution for abolition of toll bridges.... | 1910 | 569 | (7) 508 |
| 264, added | Investigation by state commission..... | 1909 | 146 | (2) 2329 |
| 264 | Investigation by state commission..... | 1910 | 569 | (7) 508 |
| 265, added | Acquisition by attorney-general..... | 1909 | 146 | (2) 2329 |
| 266, added | Expense of acquisition..... | 1909 | 146 | (2) 2329 |
| 267, added | Maintenance of bridge..... | 1909 | 146 | (2) 2330 |
| 268, added | Use of toll bridge by public service corpora- tions | 1910 | 569 | (7) 508 |
| 280, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 280, added | Motor vehicles | 1910 | 374 | (7) 509 |
| 281, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 281, added | Motor vehicles | 1910 | 374 | (7) 510 |
| 281 | Motor vehicles; definitions..... | 1911 | 491 | (8) 407 |
| 282, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 282, added | Motor vehicles | 1910 | 374 | (7) 510 |
| 282 | Registration of motor vehicles..... | 1911 | 491 | (8) 408 |
| 283, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 283, added | Motor vehicles | 1910 | 374 | (7) 512 |
| 283 | Motor vehicle number plates..... | 1911 | 491 | (8) 410 |
| 284, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 284, added | Motor vehicles | 1910 | 374 | (7) 513 |
| 284 | Registration of motor vehicles by manu- facturers and dealers | 1911 | 491 | (8) 411 |
| 285, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 285, added | Motor vehicles | 1910 | 374 | (7) 513 |
| 286, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 286, added | Motor vehicles | 1910 | 374 | (7) 514 |
| 287, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 287, added | Motor vehicles | 1910 | 374 | (7) 515 |
| 288, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 288, added | Motor vehicles | 1910 | 374 | (7) 515 |
| 289, repealed | Motor vehicles | 1910 | 374 | (7) 509 |
| 289, added | Motor vehicles | 1910 | 374 | (7) 517 |
| 289 | License of chauffeurs..... | 1911 | 491 | (8) 412 |

TABLE OF LAWS AMENDED OR REPEALED.

569

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|-------|
| HIGHWAY LAW—(Continued). | | | | |
| 290-310, repealed | Motor vehicles | 1910 | 374 (7) | 509 |
| 290-293, added | Motor vehicles | 1910 | 374 (7) | 518 |
| 320 | Construction or improvement of highways; expense | 1912 | 534 (9) | 226 |
| 330 | Injuries to highways..... | 1910 | 568 (7) | 523 |
| 343 | Albany post road..... | 1910 | 658 (7) | 523 |
| INDIAN LAW: | | | | |
| (L. 1909, ch. 31, constituting cons. laws, ch. 26.) | | | | |
| 10 | Licenses for clergymen to reside on tribal lands | 1910 | 237 (7) | 529 |
| INSANITY LAW: | | | | |
| (L. 1909, ch. 32, constituting cons. laws, ch. 27.) | | | | |
| 2 | Definitions | 1912 | 121 (9) | 232 |
| Art. 2, tit. 3 | State hospital commission..... | 1912 | 121 (9) | 232 |
| 3 | Members of state hospital commission..... | 1912 | 121 (9) | 232 |
| 4 | Medical inspector | 1909 | 157 (2) | 2442 |
| 4 | Engineers and inspectors..... | 1911 | 768 (8) | 416 |
| 4 | State hospital commission office force..... | 1912 | 121 (9) | 233 |
| 9 | Visitation and inspection of certain institu- tions | 1912 | 121 (9) | 233 |
| 11 | Annual reports of lunacy commission..... | 1910 | 111 (7) | 534 |
| 12 | Mohansic State Hospital, commitment to.. | 1910 | 310 (7) | 534 |
| 17 | Provision for prospective wants of insane.. | 1912 | 121 (9) | 234 |
| 18, repealed | State hospital attorneys..... | 1912 | 121 (9) | 234 |
| 19 | Board of alienists..... | 1910 | 604 (7) | 534 |
| 19 | Bureau of deportation..... | 1912 | 121 (9) | 234 |
| 40 | Mohansic State Hospital included..... | 1910 | 310 (7) | 536 |
| 40 | State hospitals for indigent persons..... | 1912 | 121 (9) | 236 |
| 40, subd. 14, added | Mohansic State Hospital for Insane, estab- lished | 1910 | 57 (7) | 536 |
| 40a, added | Mohansic State Hospital for Insane, estab- lished | 1910 | 57 (7) | 536 |
| 43 | Boards of managers, state hospitals..... | 1912 | 121 (9) | 237 |
| 45 | Superintendents of state hospitals..... | 1912 | 121 (9) | 238 |
| 47 | Purchasing steward, certain hospitals, abol- ished | 1911 | 719 (8) | 417 |
| 48 | Superintendents of state hospitals, meetings | 1912 | 121 (9) | 240 |
| 49 | Salaries of officers and employees of state hospitals | 1912 | 121 (9) | 240 |
| 50 | Salaries of employees of state hospitals... | 1912 | 43 (9) | 241 |
| 51 | Quarterly estimates of expenditures..... | 1911 | 768 (8) | 417 |
| 54 | Actions to recover moneys due state hos- pital | 1910 | 389 (7) | 537 |
| 56 | Purchases and contracts..... | 1911 | 768 (8) | 418 |
| 58 | Actions against state hospital commission- ers, managers, etc..... | 1912 | 121 (9) | 245 |
| 59 | Private institutions | 1910 | 329 (7) | 537 |
| 64 | State hospitals, condemnation proceedings. | 1912 | 121 (9) | 246 |
| 65 | State hospital buildings..... | 1911 | 768 (8) | 419 |
| 82 | Proceedings to determine question of in- sanity | 1912 | 121 (9) | 246 |
| 83 | Review of proceedings and order of com- mitment | 1909 | 155 (2) | 2479 |
| 84 | Costs of medical care and nursing..... | 1910 | 608 (7) | 538 |
| 85 | Liability for support of indigent insane... | 1910 | 389 (7) | 539 |
| 85 | Poor and indigent insane..... | 1911 | 768 (8) | 421 |
| 86 | Liability for support of insane..... | 1910 | 608 (7) | 540 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|----------------------------------|--|-------|---------------|---------|
| INSANITY LAW—(Continued). | | | | |
| 87 | Duties of local officers..... | 1910 | 608 | (7) 541 |
| 87 | Duties of local officers..... | 1912 | 121 | (9) 249 |
| 88 | Duty to care for insane; apprehension of insane persons | 1910 | 608 | (7) 542 |
| 88 | Duty to care for insane; apprehension of insane persons | 1912 | 121 | (9) 252 |
| 89 | Patients in state hospitals under special agreement | 1912 | 121 | (9) 253 |
| 94 | Discharge of patients from state hospitals. | 1912 | 121 | (9) 253 |
| 99 | Voluntary patients in state hospitals, etc.. | 1912 | 121 | (9) 255 |
| Art. 5 renum- bered art. 6 | Matteawan State Hospital..... | 1912 | 59 | (9) 260 |
| 110 renumbered | Matteawan State Hospital, establishment, etc. | 1912 | 59 | (9) 260 |
| 130 | Matteawan State Hospital, establishment, etc. | 1912 | 59 | (9) 256 |
| 110, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 256 |
| 110 | Matteawan State Hospital, establishment, etc. | 1912 | 121 | (9) 260 |
| 111 renumbered | Matteawan State Hospital, rules and regu- lations | 1912 | 59 | (9) 260 |
| 131 | Matteawan State Hospital, rules and regu- lations | 1912 | 59 | (9) 256 |
| 111, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 256 |
| 112 renumbered | Matteawan State Hospital, medical super- intendent | 1912 | 59 | (9) 260 |
| 132 | Matteawan State Hospital, medical super- intendent | 1912 | 59 | (9) 257 |
| 112, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 257 |
| 113 renumbered | Matteawan State Hospital, treasurer..... | 1912 | 59 | (9) 260 |
| 133 | Matteawan State Hospital, treasurer..... | 1912 | 59 | (9) 258 |
| 113, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 258 |
| 114 renumbered | Matteawan State Hospital, salaries..... | 1912 | 59 | (9) 261 |
| 134 | Matteawan State Hospital, salaries..... | 1912 | 59 | (9) 258 |
| 114, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 258 |
| 114 | Matteawan State Hospital, salaries..... | 1912 | 121 | (9) 261 |
| 115 renumbered | Matteawan State Hospital, medical super- intendent, powers | 1912 | 59 | (9) 261 |
| 135 | Matteawan State Hospital, medical super- intendent, powers | 1912 | 59 | (9) 258 |
| 115, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 258 |
| 115 | Matteawan State Hospital, medical super- intendent, powers | 1912 | 121 | (9) 261 |
| 116 renumbered | Matteawan State Hospital, monthly esti- mates | 1912 | 59 | (9) 260 |
| 136 | Matteawan State Hospital, monthly esti- mates | 1912 | 59 | (9) 259 |
| 116, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 259 |
| 117 renumbered | Matteawan State Hospital, medical super- intendent, removal | 1912 | 59 | (9) 260 |
| 137 | Matteawan State Hospital, medical super- intendent, removal | 1912 | 59 | (9) 259 |
| 117, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 259 |
| 118 renumbered | Matteawan State Hospital, transfer of in- sane convicts | 1912 | 59 | (9) 260 |
| 138 | Matteawan State Hospital, transfer of in- sane convicts | 1912 | 59 | (9) 259 |
| 118, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 259 |
| 119 renumbered | Matteawan State Hospital, expiration term of imprisonment | 1912 | 59 | (9) 262 |
| 139 | Matteawan State Hospital, expiration term of imprisonment | 1912 | 59 | (9) 259 |
| 119, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 259 |
| 119 | Matteawan State Hospital, expiration term of imprisonment | 1912 | 121 | (9) 262 |
| 119 | Retirement board | 1912 | 283 | (9) 259 |
| 120 renumbered | Matteawan State Hospital, recovery of in- sane | 1912 | 59 | (9) 260 |
| 140 | Matteawan State Hospital, recovery of in- sane | 1912 | 59 | (9) 259 |
| 120, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 259 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|----------------------------------|--|-------|---------------|----------|
| INSANITY LAW—(Continued). | | | | |
| 121 renumbered | | | | |
| 141 | Matteawan State Hospital, certificate of conviction | 1912 | 59 | (9) 260 |
| 121, added | Retirement of state hospital employees..... | 1912 | 59 | (9) 260 |
| 122 renumbered | | | | |
| 142 | Matteawan State Hospital, transfer to.... | 1912 | 59 | (9) 262 |
| 122, added | Retirement of state hospital employees.... | 1912 | 59 | (9) 260 |
| 122 | Matteawan State Hospital, transfer to.... | 1912 | 121 | (9) 262 |
| 123 | Recovery for support of patients..... | 1909 | 240 | (2) 2496 |
| 123 renumbered | | | | |
| 143 | Matteawan State Hospital, recovery for support | 1912 | 59 | (9) 263 |
| 123, repealed | Matteawan State Hospital, recovery for support | 1912 | 121 | (9) 263 |
| 124 renumbered | | | | |
| 144 | Matteawan State Hospital, tenure of office.. | 1912 | 59 | (9) 260 |
| 125 renumbered | | | | |
| 145 | Matteawan State Hospital, communications with patients | 1912 | 59 | (9) 260 |
| Art. 6 renum- bered art. 7 | Dannemora State Hospital..... | 1912 | 59 | (9) 260 |
| 140 renumbered | | | | |
| 150 | Dannemora State Hospital, purposes, etc.. | 1912 | 59 | (9) 263 |
| 140 | Dannemora State Hospital, purposes, etc.. | 1912 | 121 | (9) 263 |
| 141 renumbered | | | | |
| 151 | Dannemora State Hospital, rules and regu- lations | 1912 | 59 | (9) 260 |
| 142 renumbered | | | | |
| 152 | Dannemora State Hospital, medical super- intendent | 1912 | 59 | (9) 263 |
| 142 | Dannemora State Hospital, medical super- intendent | 1912 | 121 | (9) 263 |
| 143 renumbered | | | | |
| 153 | Dannemora State Hospital, treasurer..... | 1912 | 59 | (9) 260 |
| 144 renumbered | | | | |
| 154 | Dannemora State Hospital, salaries..... | 1912 | 59 | (9) 263 |
| 144 | Dannemora State Hospital, salaries..... | 1912 | 121 | (9) 263 |
| 145 renumbered | | | | |
| 155 | Dannemora State Hospital, medical super- intendent, powers | 1912 | 59 | (9) 263 |
| 145 | Dannemora State Hospital, medical super- intendent, powers | 1912 | 121 | (9) 263 |
| 146 renumbered | | | | |
| 156 | Dannemora State Hospital, monthly esti- mates | 1912 | 59 | (9) 260 |
| 147 renumbered | | | | |
| 157 | Dannemora State Hospital, medical super- intendent, removal | 1912 | 59 | (9) 260 |
| 148 renumbered | | | | |
| 158 | Dannemora State Hospital, transfer to.... | 1912 | 59 | (9) 264 |
| 148 | Dannemora State Hospital, transfer to.... | 1912 | 121 | (9) 264 |
| 149 renumbered | | | | |
| 159 | Dannemora State Hospital, retention of in- sane convicts | 1912 | 59 | (9) 265 |
| 149 | Dannemora State Hospital, retention of in- sane convicts | 1912 | 121 | (9) 265 |
| 150 renumbered | | | | |
| 160 | Dannemora State Hospital, expiration of term | 1912 | 59 | (9) 265 |
| 150 | Dannemora State Hospital, expiration of term | 1912 | 121 | (9) 265 |
| 151 renumbered | | | | |
| 161 | Dannemora State Hospital, recovery of in- sane | 1912 | 59 | (9) 260 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|---|-------|----------|---------|
| INSANITY LAW—(Continued). | | | | |
| 152 renumbered | | | | |
| 162 | Dannemora State Hospital, certificate of conviction | 1912 | 59 | (9) 266 |
| 152 | Dannemora State Hospital, certificate of conviction | 1912 | 121 | (9) 266 |
| 153 renumbered | | | | |
| 163 | Dannemora State Hospital, communications with patients | 1912 | 59 | (9) 266 |
| 153 | Dannemora State Hospital, communications with patients | 1912 | 121 | (9) 266 |
| Art. 7 renumbered art. 8 | Psychiatric Institute | 1912 | 59 | (9) 260 |
| 170 | Psychiatric Institute | 1910 | 289 | (7) 545 |
| 171 | Psychiatric Institute | 1910 | 289 | (7) 545 |
| 171 | Psychiatric Institute | 1912 | 121 | (9) 266 |
| 172 | Psychiatric Institute | 1910 | 289 | (7) 545 |
| 172 | Psychiatric Institute | 1912 | 121 | (9) 266 |
| Art. 8 renumbered art. 9 | Laws repealed; when to take effect..... | 1912 | 59 | (9) 260 |
| INSURANCE LAW: | | | | |
| (L. 1909, ch. 33, constituting cons. laws, ch. 28.) | | | | |
| 1 | Short title and application..... | 1912 | 265 | (9) 268 |
| 2 | Superintendent of insurance..... | 1912 | 265 | (9) 268 |
| 6 | Fees | 1910 | 634 | (7) 546 |
| 7 | Expenses of examinations..... | 1909 | 301 | (2)2515 |
| 7 | Expenses of examinations..... | 1910 | 634 | (7) 546 |
| 8, repealed | Expenses of department..... | 1909 | 301 | (2)2515 |
| 9 | Certificate of authorization..... | 1910 | 634 | (7) 546 |
| 12 | Minimum capital stock..... | 1910 | 634 | (7) 547 |
| 13 | Deposit of securities..... | 1910 | 634 | (7) 548 |
| 16 | Investments | 1909 | 240 | (2)2520 |
| 16 | Securities guaranty corporations..... | 1909 | 302 | (2)2520 |
| 16 | Investment of capital and surplus..... | 1910 | 634 | (7) 548 |
| 16 | Investments | 1911 | 150 | (8) 423 |
| 16 | Investment of capital and surplus..... | 1912 | 233 | (9) 268 |
| 18 | Investments | 1909 | 301 | (2)2522 |
| 18 | Investments | 1910 | 634 | (7) 550 |
| 22 | Reinsurance | 1909 | 301 | (2)2524 |
| 22 | Reinsurance, fire and marine companies.... | 1910 | 168 | (7) 551 |
| 22 | Reinsurance, life insurance companies.... | 1911 | 369 | (8) 424 |
| 24 | Limitation of risk..... | 1910 | 634 | (7) 552 |
| 24 | Limitation of risk..... | 1911 | 595 | (8) 425 |
| 25 | Foreign fire and marine companies..... | 1910 | 168 | (7) 552 |
| 26 | Deposits by corporations of other states.... | 1910 | 634 | (7) 553 |
| 27 | Funds and capital of corporations from outside United States..... | 1910 | 634 | (7) 553 |
| 28 | Special deposits | 1910 | 634 | (7) 555 |
| 30 | Removal of cause to federal courts..... | 1910 | 634 | (7) 556 |
| 32 | Renewal of certificate of authority..... | 1909 | 301 | (2)2532 |
| 34 | Taxation of foreign corporations..... | 1910 | 634 | (7) 557 |
| 34 | Taxation of foreign corporations..... | 1911 | 766 | (8) 425 |
| 35 | Service of process by superintendent of insurance | 1911 | 502 | (8) 426 |
| 37 | Corporations exempted | 1910 | 634 | (7) 558 |
| 39 | Examiners and examinations..... | 1910 | 634 | (7) 558 |
| 44 | Reports of corporations..... | 1910 | 634 | (7) 559 |
| 46 | Annual report of superintendent..... | 1910 | 634 | (7) 560 |
| 46 | Annual report of superintendent..... | 1912 | 89 | (9) 270 |
| 46, subd. 4 | Annual report of superintendent..... | 1909 | 301 | (2)2541 |
| 50 | Agent's certificate of authority..... | 1909 | 301 | (2)2542 |
| 52 | Reorganization of existing corporations.... | 1910 | 634 | (7) 561 |

TABLE OF LAWS AMENDED OR REPEALED.

573

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|-----------------------------------|---|-------|----------|---------|
| INSURANCE LAW—(Continued). | | | | |
| 52 | Reorganization of existing corporations.... | 1911 | 47 | (8) 427 |
| 55 | Insurance without consent of insured, prohibited | 1910 | 634 | (7) 562 |
| 56 | Foreign fire and marine companies..... | 1910 | 168 | (7) 563 |
| 57 | Application of art. 1..... | 1909 | 240 | (2)2548 |
| 57 | Application of art. 1..... | 1910 | 634 | (7) 564 |
| 57, repealed | Application of art. 1..... | 1910 | 638 | (7) 564 |
| 60 | Misrepresentations prohibited | 1911 | 533 | (8) 429 |
| 63, added | Delinquent corporations | 1909 | 300 | (2)2551 |
| 63 | Delinquent corporations | 1910 | 634 | (7) 565 |
| 63 | Delinquent corporations | 1911 | 366 | (8) 429 |
| 63 | Delinquent corporations | 1912 | 217 | (9) 271 |
| 64, added | Religious orders | 1910 | 615 | (7) 567 |
| 65, added | Rebating and discriminations prohibited... | 1911 | 416 | (8) 432 |
| 65 | Rebating and discriminations prohibited... | 1912 | 225 | (9) 275 |
| 70 | Securities guaranty corporations..... | 1909 | 302 | (2)2554 |
| 70 | Incorporation | 1910 | 637 | (7) 567 |
| 70 | Incorporation of casualty corporations.... | 1911 | 324 | (8) 434 |
| 70 | Incorporation | 1912 | 232 | (9) 276 |
| 70, subd. 8 | Incorporation of casualty corporations.... | 1912 | 231 | (9) 277 |
| 73 | Special deposits to secure registered policies and annuity bonds..... | 1910 | 697 | (7) 570 |
| 74 | Annual report of registered policies and annuity bonds | 1911 | 325 | (8) 436 |
| 84 | Valuation of policies..... | 1909 | 301 | (2)2567 |
| 84 | Valuation of industrial life insurance policies | 1910 | 616 | (7) 571 |
| 86 | Assets of employers' liability casualty companies | 1911 | 183 | (8) 436 |
| 88 | Surrender values | 1909 | 301 | (2)2572 |
| 88 | Surrender values | 1909 | 595 | (2)2572 |
| 88 | Surrender values | 1910 | 614 | (7) 572 |
| 89 | Discriminations, industrial insurance..... | 1911 | 249 | (8) 441 |
| 91 | Agent's certificate of authority..... | 1909 | 301 | (2)2575 |
| 95 | Conversion of stock life insurance company into mutual | 1911 | 150 | (8) 442 |
| 96 | Limitation of new business..... | 1910 | 697 | (7) 575 |
| 96 | Limitation of new business..... | 1911 | 369 | (8) 443 |
| 97 | Limitation of expenses..... | 1909 | 301 | (2)2588 |
| 97 | Limitation of expenses..... | 1910 | 697 | (7) 576 |
| 100 | Investments by domestic life insurance companies | 1911 | 767 | (8) 443 |
| 101, repealed | Standard forms of life insurance policies.. | 1909 | 301 | (2)2593 |
| 101, added | Standard forms of life insurance policies.. | 1909 | 301 | (2)2592 |
| 101 | Standard forms of life insurance policies.. | 1911 | 369 | (8) 444 |
| 102 | Life insurance companies issuing participating policies | 1911 | 369 | (8) 446 |
| 107, added | Standard provisions for accident and health policies | 1910 | 636 | (7) 579 |
| 110 | Purposes of insurance..... | 1910 | 168 | (7) 582 |
| 110 | Automobile insurance | 1911 | 126 | (8) 447 |
| 121 | Standard fire insurance policy..... | 1909 | 240 | (2)2607 |
| 121 | Standard fire insurance policy..... | 1910 | 168 | (7) 583 |
| 121 | Lloyds | 1910 | 638 | (7) 583 |
| 121 | Standard fire insurance policy..... | 1910 | 668 | (7) 583 |
| 137 | Licensed agents for surplus line fire insurance | 1911 | 322 | (8) 447 |
| 138, repealed | Tax on unauthorized foreign fire insurance companies | 1909 | 286 | (2)2623 |
| 138, added | License to issue fire insurance policies in excepted cases | 1911 | 322 | (8) 449 |
| 139, repealed | Agents of unauthorized foreign fire insurance companies | 1909 | 286 | (2)2623 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|-----------------------------------|---|-------|---------------|----------|
| INSURANCE LAW—(Continued). | | | | |
| 140, repealed | Distribution of tax..... | 1909 | 286 | (2) 2623 |
| 141, repealed | Collector of such tax..... | 1909 | 286 | (2) 2623 |
| 141, added | Rate making associations..... | 1911 | 460 | (8) 450 |
| 141 | Rate making associations..... | 1912 | 175 | (9) 280 |
| 142, repealed | Reserve funds of Lloyds, etc..... | 1910 | 638 | (7) 585 |
| 142, added | Agents' and brokers' certificates of author- ity | 1911 | 748 | (8) 451 |
| 142 | Agents' and brokers' certificates of author- ity | 1912 | 1 | (9) 282 |
| 142 | Agents' and brokers' certificates of author- ity | 1912 | 172 | (9) 285 |
| 143, repealed | Change of name of Lloyds, etc..... | 1910 | 638 | (7) 585 |
| 149, added | Foreign mutual fire insurance companies.. | 1909 | 286 | (2) 2625 |
| 149 | Foreign mutual fire insurance companies.. | 1911 | 161 | (8) 454 |
| 149 | Foreign mutual fire insurance companies.. | 1911 | 765 | (8) 454 |
| 149a, added | Tax | 1909 | 286 | (2) 2626 |
| 149a | Premium or assessment tax..... | 1911 | 161 | (8) 455 |
| 149b, added | Agents | 1909 | 286 | (2) 2627 |
| 149c, added | Distribution of tax..... | 1909 | 286 | (2) 2627 |
| 150 | Marine insurance corporations..... | 1909 | 240 | (2) 2628 |
| 150 | Marine risks | 1910 | 168 | (7) 585 |
| 150 | Automobile insurance | 1911 | 126 | (8) 456 |
| 162, repealed | Lloyds, etc. | 1910 | 638 | (7) 586 |
| 170 | Securities guaranty corporations..... | 1909 | 302 | (2) 2635 |
| 170 | Powers of title guaranty corporations.... | 1911 | 525 | (8) 457 |
| 210 | Agreements for benefits..... | 1911 | 536 | (8) 458 |
| 214 | Exemption of Odd Fellows and Masons.... | 1911 | 536 | (8) 459 |
| 215, repealed | Deposit of securities with superintendent of insurance | 1911 | 536 | (8) 460 |
| 218, added | Admission of minors to certain kinds of in- surance | 1911 | 176 | (8) 460 |
| 230-240, repealed | Fraternal beneficiary societies..... | 1911 | 198 | (8) 461 |
| 230-240, added | Fraternal beneficiary societies..... | 1911 | 198 | (8) 461 |
| 241, added | Fraternal beneficiary societies..... | 1909 | 589 | (2) 2673 |
| 241, repealed | Fraternal beneficiary societies..... | 1911 | 198 | (8) 461 |
| 241, added | Fraternal beneficiary societies..... | 1911 | 198 | (8) 474 |
| 242-249, added | Fraternal beneficiary societies..... | 1911 | 198 | (8) 474 |
| 250 | Insurance of lives of domestic animals on co-operative or assessment plan..... | 1910 | 318 | (7) 587 |
| 260, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 260, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 588 |
| 260 | Co-operative fire insurance companies.... | 1911 | 323 | (8) 476 |
| 261, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 261, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 589 |
| 261 | Co-operative fire insurance companies.... | 1911 | 323 | (8) 477 |
| 262, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 262, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 590 |
| 262 | Co-operative fire insurance companies.... | 1911 | 323 | (8) 478 |
| 263, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 263, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 591 |
| 264, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 264, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 592 |
| 264 | Co-operative fire insurance companies.... | 1911 | 323 | (8) 480 |
| 265, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |
| 265, added | Co-operative fire insurance companies.... | 1910 | 328 | (7) 593 |
| 266, repealed | Town and county co-operative insurance corporations | 1910 | 328 | (7) 588 |

TABLE OF LAWS AMENDED OR REPEALED.

575

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|-------|
| INSURANCE LAW—(Continued). | | | | |
| 266, added | Co-operative fire insurance companies..... | 1910 | 328 (7) | 594 |
| 266 | Co-operative fire insurance companies..... | 1911 | 303 (8) | 482 |
| 267, repealed | Town and county co-operative insurance corporations | 1910 | 328 (7) | 588 |
| 267, added | Co-operative fire insurance companies..... | 1910 | 328 (7) | 594 |
| 267 | Co-operative fire insurance companies..... | 1911 | 323 (8) | 482 |
| 267 | Co-operative fire insurance companies..... | 1912 | 90 (9) | 289 |
| 268, repealed | Town and county co-operative insurance corporations | 1910 | 328 (7) | 588 |
| 268, added | Co-operative fire insurance companies..... | 1910 | 328 (7) | 595 |
| 269, repealed | Town and county co-operative insurance corporations | 1910 | 328 (7) | 588 |
| 269, added | Co-operative fire insurance companies..... | 1910 | 328 (7) | 596 |
| 270-280, repealed | Town and county co-operative insurance corporations | 1910 | 328 (7) | 588 |
| 300, added | Lloyds and inter-insurers..... | 1910 | 638 (7) | 596 |
| 300 | Lloyds and inter-insurers..... | 1911 | 502 (8) | 484 |
| 301, added | Lloyds and inter-insurers..... | 1910 | 638 (7) | 597 |
| 302, added | Lloyds and inter-insurers..... | 1910 | 638 (7) | 598 |
| 302 | Lloyds and inter-insurers..... | 1911 | 502 (8) | 485 |
| 303, added | Lloyds and inter-insurers..... | 1910 | 638 (7) | 599 |
| 304, added | Lloyds and inter-insurers..... | 1911 | 502 (8) | 486 |
| 305, added | Lloyds and inter-insurers..... | 1911 | 502 (8) | 489 |
| 330-346, repealed | Certain town insurance companies..... | 1910 | 328 (7) | 588 |
| Art. 10a, added | State fire marshal..... | 1911 | 451 (8) | 490 |
| Art. 10a | State fire marshal..... | 1912 | 453 (9) | 291 |
| Schedule of repeals | L. 1907, ch. 397, omitted..... | 1909 | 240 (2) | 2699 |
| Schedule of repeals | L. 1898, ch. 171, inserted..... | 1909 | 240 (2) | 2698 |
| Schedule of repeals | L. 1901, ch. 397, inserted..... | 1909 | 240 (2) | 2698 |
| JUDICIARY LAW: | | | | |
| (L. 1909, ch. 35, constituting cons. laws, ch. 30.) | | | | |
| 87 | Destruction of papers by county clerk..... | 1911 | 275 (8) | 500 |
| 87 | Destruction of papers by county clerk..... | 1912 | 252 (9) | 309 |
| 88, subds. 1, 2 | Attorneys, admission, disbarment, etc..... | 1912 | 253 (9) | 309 |
| 109 | Confidential clerks, appellate division, cer- tain departments | 1912 | 173 (9) | 310 |
| 111, subd. 2 | Appointment of court attendants, second de- partment | 1910 | 325 (7) | 601 |
| 114 | Confidential attendants, first department.. | 1911 | 611 (8) | 501 |
| 115 | Appellate division, first department, official referees | 1911 | 844 (8) | 502 |
| 115 | Appellate division, first department, official referees | 1912 | 62 (9) | 310 |
| 115 | Appellate division, first and second depart- ments, official referees..... | 1912 | 323 (9) | 310 |
| 116 | Appellate division, first department, official referees | 1911 | 844 (8) | 502 |
| 116 | Appellate division, first and second depart- ments, official referees..... | 1912 | 323 (9) | 311 |
| 159 | Special deputy clerk, Queens county..... | 1910 | 695 (7) | 602 |
| 160, subd. 1 | Appointment of clerks in certain judicial districts | 1911 | 404 (8) | 502 |
| 160, subd. 4 | Confidential clerks to justices, fifth district | 1912 | 118 (9) | 312 |
| 160, subd. 5, repealed | Confidential clerks to justices, fifth district | 1912 | 118 (9) | 312 |
| 160, subd. 6, repealed | Confidential clerk to trial justice, fifth dis- trict, residing in Jefferson county..... | 1912 | 118 (9) | 312 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|-----------------------------------|---|-------|----------|----------|
| JUDICIARY LAW—(Continued). | | | | |
| 161 | Number of stenographers, eighth judicial district | 1910 | 60 | (7) 602 |
| 161, subd. 3 | Stenographers in certain counties..... | 1909 | 202 | (3) 2761 |
| 161, subd. 3a, added | Typewriter operator, second judicial department | 1909 | 401 | (3) 2761 |
| 164 | Stenographers' expenses | 1909 | 240 | (3) 2763 |
| 165 | Stenographers' compensation, certain districts | 1909 | 240 | (3) 2763 |
| 168 | Appointment of court officers, Nassau and Suffolk counties | 1911 | 182 | (8) 502 |
| 169 | Appointment of clerks for courts of record, Erie county | 1910 | 128 | (7) 603 |
| 195 | Chief clerk and assistants, Kings county court | 1911 | 640 | (8) 503 |
| 195 | Chief clerk and assistants, Kings county court | 1911 | 826 | (8) 503 |
| 196 | Confidential clerks to county judges..... | 1909 | 562 | (3) 2766 |
| 197, subd. 2 | Stenographer, county court, Jefferson county | 1909 | 561 | (3) 2767 |
| 202, added | Special deputy clerk, Queens county..... | 1910 | 695 | (7) 603 |
| 233 | Salaries of court officers, Erie county..... | 1910 | 14 | (7) 603 |
| 251 | Court clerks, first and second districts, not to be referees..... | 1912 | 154 | (9) 312 |
| 262 | Clerks to judges of court of appeals, compensation | 1912 | 156 | (9) 312 |
| 271, subd. 2 | Clerk, appellate division, second department, salary | 1911 | 828 | (8) 503 |
| 271, subd. 5 | Deputy clerk, appellate division, second department, salary | 1911 | 828 | (8) 503 |
| 271, subd. 6 | Compensation of deputy clerk, fourth department | 1912 | 377 | (9) 312 |
| 271, subd. 9 | Consultation clerk, appellate division, fourth department, salary..... | 1912 | 119 | (9) 313 |
| 274, subd. 2 | Salary of clerks, appellate division, second department | 1911 | 365 | (8) 503 |
| 275 | Special deputy clerks, appellate division, first department | 1911 | 363 | (8) 504 |
| 279, subd. 1 | Salary of clerks to justices, first district... | 1911 | 404 | (8) 504 |
| 279, subd. 2 | Salaries of confidential clerks, second district | 1911 | 365 | (8) 504 |
| 279, subd. 3 | Salaries of clerks supreme court, Kings county | 1911 | 365 | (8) 505 |
| 279, subd. 4 | Salaries of confidential clerks, fifth district. | 1912 | 118 | (9) 313 |
| 279, subd. 5, repealed | Salaries of clerks to justices, fifth district.. | 1912 | 118 | (9) 313 |
| 279, subd. 6, repealed | Salary of clerk to trial justice, fifth district, residing in Jefferson county..... | 1912 | 118 | (9) 313 |
| 279, subd. 9 | Confidential clerks to justices, ninth district | 1909 | 572 | (3) 2782 |
| 280 | Special deputy clerk, Queens county..... | 1910 | 695 | (7) 603 |
| 282 | Chief clerk, Kings county court..... | 1911 | 640 | (8) 505 |
| 283 | Chief clerk and assistants, Kings county court | 1911 | 640 | (8) 505 |
| 284 | Chief clerk and assistants, Kings county court | 1911 | 640 | (8) 506 |
| 284 | Chief clerk and assistants, Kings county court | 1911 | 826 | (8) 506 |
| 285 | Confidential clerks to county judges..... | 1909 | 563 | (3) 2783 |
| 286, 287, added | Special deputy clerk, Queens county..... | 1910 | 695 | (7) 604 |
| 288, added | Record clerks, court of general sessions, New York county..... | 1912 | 538 | (9) 313 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|-----------------------------------|---|-------|----------|-------|
| JUDICIARY LAW—(Continued). | | | | |
| 303 | Stenographers to furnish copies of proceedings to parties..... | 1912 | 202 (9) | 313 |
| 307 | Stenographers, appellate division, certain departments | 1911 | 543 (8) | 506 |
| 307 | Compensation, confidential clerks, appellate division, certain departments..... | 1912 | 173 (9) | 313 |
| 313, 314, 316 | Stenographers, second and ninth judicial districts | 1910 | 180 (7) | 604 |
| 317 | Stenographers, third and fourth judicial districts | 1911 | 543 (8) | 506 |
| 318, subd. 1 | Stenographer, county court, Jefferson county | 1909 | 561 (3) | 2794 |
| 319, subd. 2 | Compensation of stenographer, Albany county court | 1910 | 27 (7) | 605 |
| 319, subd. 5 | Stenographer, county court, Monroe county | 1909 | 560 (3) | 2796 |
| 319, subd. 8 | Stenographer, county court, Jefferson county | 1909 | 561 (3) | 2796 |
| 319, subd. 8 | Stenographer, Rensselaer county court.... | 1910 | 625 (7) | 606 |
| 347 | Compensation of attendants, third and fourth departments | 1910 | 304 (7) | 606 |
| 347 | Compensation of attendants, third and fourth departments | 1912 | 376 (9) | 314 |
| 348 | Salaries of court attendants, first department and first judicial district..... | 1910 | 261 (7) | 606 |
| 348 | Salaries of attendants of court of general sessions, New York county..... | 1910 | 696 (7) | 606 |
| 348a, added | Salaries of messengers and attendants, surrogates' court, New York county..... | 1911 | 267 (8) | 507 |
| 349 | Duties of court attendants, Nassau and Suffolk counties | 1911 | 182 (8) | 507 |
| 351 | Salaries of court attendants, Nassau and Suffolk counties | 1911 | 182 (8) | 507 |
| 351 | Salaries of court attendants, Queens county | 1911 | 566 (8) | 507 |
| 365 | Compensation of court criers..... | 1910 | 34 (7) | 607 |
| 365 | Salaries of court criers, Queens county.... | 1911 | 566 (8) | 507 |
| 366 | Compensation of court criers, Erie county.... | 1910 | 15 (7) | 607 |
| 380 | Salaries of interpreters, court of general sessions, New York county..... | 1911 | 396 (8) | 508 |
| 386 | Salaries of court interpreters, Queens county | 1911 | 566 (8) | 508 |
| 387 | Court interpreters | 1909 | 259 (3) | 2804 |
| 388, added | Temporary appointment of interpreters.... | 1912 | 120 (9) | 314 |
| 474 | Compensation of attorney or counsellor.... | 1912 | 229 (9) | 314 |
| 502, subd. 3 | Qualifications of trial jurors, Richmond county | 1910 | 96 (7) | 609 |
| 513 | Drawing trial jurors, Richmond county.... | 1910 | 95 (7) | 609 |
| 610 | Jurors in New York county..... | 1911 | 29 (8) | 509 |
| 649 | Nonattendance of jurors..... | 1909 | 240 (3) | 2862 |

LABOR LAW:

(L. 1909, ch. 36, constituting cons. laws, ch. 31.)

| | | | | |
|------------|---|------|---------|------|
| Syllabus | Bureau of industries and immigration.... | 1910 | 514 (7) | 616 |
| Syllabus | Bakeries and confectioneries..... | 1911 | 637 (8) | |
| 3 | Hours constituting day's work..... | 1909 | 292 (3) | 3005 |
| 12 | Payment of wages by corporations..... | 1909 | 206 (3) | 3014 |
| 13 | Scaffolding | 1911 | 693 (8) | 515 |
| 20 | Protection of employees in buildings..... | 1911 | 693 (8) | 516 |
| 20a, added | Accidents to be reported..... | 1910 | 155 (7) | 621 |
| 40 | Commissioner of labor..... | 1911 | 729 (8) | 518 |
| 41 | Deputy commissioners | 1911 | 729 (8) | 518 |
| 42 | Bureau of industries and immigration.... | 1910 | 514 (7) | 621 |

Sup. III—37

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|-------------------------------|---|-------|----------|----------|
| LABOR LAW—(Continued). | | | | |
| 43 | Investigators | 1910 | 514 | (7) 621 |
| 43, subd. 1 | Commissioner of labor and assistants; powers | 1912 | 382 | (9) 322 |
| 44 | Investigators | 1910 | 514 | (7) 622 |
| 45 | Sub-offices | 1911 | 729 | (8) 518 |
| 49, added | Industrial directory | 1911 | 565 | (8) 518 |
| 53, added | Industrial poisonings to be reported..... | 1911 | 258 | (8) 518 |
| 60 | Chief factory inspector..... | 1911 | 729 | (8) 519 |
| 61 | Factory inspectors | 1911 | 729 | (8) 519 |
| 61 | Factory inspectors | 1912 | 158 | (9) 323 |
| 62, subds. 1, 3 | Commissioner of labor, powers and duties.. | 1911 | 729 | (8) 519 |
| 69, added | Registration of factories..... | 1912 | 335 | (9) 323 |
| 71, subd. (e) and final ¶ | Employment of minors, physicians' certificates | 1912 | 333 | (9) 323 |
| 75 | Employment of minors, report of certificates | 1912 | 333 | (9) 325 |
| 77, 78 | Hours of labor, minors and women..... | 1912 | 539 | (9) 325 |
| 79 | Elevator and hoisting shafts..... | 1909 | 299 | (3) 3038 |
| 80 | Doors and windows in factories..... | 1910 | 461 | (7) 622 |
| 81 | Protection of employees operating machinery | 1909 | 299 | (3) 3039 |
| 81 | Protection of employees operating machinery | 1910 | 106 | (7) 623 |
| 83 | Doors and windows in factories..... | 1910 | 461 | (7) 625 |
| 83a, added | Fire drills in factories..... | 1912 | 330 | (9) 328 |
| 83b, added | Automatic sprinklers | 1912 | 332 | (9) 328 |
| 83c, added | Fire prevention in factories..... | 1912 | 329 | (9) 328 |
| 84 | Sanitation of factories..... | 1910 | 114 | (7) 625 |
| 87 | Accidents to be reported..... | 1910 | 155 | (7) 626 |
| 88 | Sanitary conveniences in factories..... | 1910 | 229 | (7) 626 |
| 88 | Sanitary conveniences in factories..... | 1912 | 336 | (9) 329 |
| 89a, added | Eating meals in workrooms prohibited.... | 1912 | 336 | (9) 330 |
| 93 | Employment of women and children..... | 1909 | 299 | (3) 3046 |
| 93 | Employment of women and children..... | 1910 | 107 | (7) 627 |
| 93a, added | Employment of females after childbirth prohibited | 1912 | 331 | (9) 330 |
| 95 | Unclean factories | 1912 | 334 | (9) 330 |
| 111 | Bakeries, definitions | 1911 | 637 | (8) 520 |
| 112 | Bakeries, general requirements..... | 1911 | 637 | (8) 521 |
| 113 | Bakeries, maintenance | 1911 | 637 | (8) 521 |
| 114 | Inspection of bakeries..... | 1911 | 637 | (8) 522 |
| 115, repealed | Notice requiring alterations in bakeries... | 1911 | 637 | (8) 522 |
| 126 | Report of accidents..... | 1910 | 155 | (7) 628 |
| 134a, added | Hours of labor in compressed air..... | 1909 | 291 | (3) 3063 |
| 134a | Hours of labor in compressed air..... | 1912 | 219 | (9) 330 |
| 134b, added | Work in compressed air, medical attendance | 1909 | 291 | (3) 3064 |
| 134b | Work in compressed air, medical attendance | 1912 | 219 | (9) 332 |
| 134c, added | Penalties | 1909 | 291 | (3) 3065 |
| 134d, added | Work in compressed air, air pipes required | 1912 | 219 | (9) 333 |
| 134e, added | Lighting apparatus for work in tunnels.... | 1912 | 219 | (9) 333 |
| 151, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 629 |
| 152, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 629 |
| 152 | Bureau of industries and immigration.... | 1912 | 543 | (9) 333 |
| 153, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 629 |
| 153 | Bureau of industries and immigration.... | 1912 | 543 | (9) 333 |
| 154, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 631 |
| 154 | Bureau of industries and immigration.... | 1912 | 543 | (9) 335 |
| 155, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 631 |
| 156, added | Bureau of industries and immigration.... | 1910 | 514 | (7) 632 |

TABLE OF LAWS AMENDED OR REPEALED.

579

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|---|-------|----------|----------|
| LABOR LAW—(Continued). | | | | |
| 156 renumbered | | | | |
| 156a | Bureau of Industries and Immigration..... | 1912 | 543 | (9) 338 |
| 156a, added | Licensing of immigrant lodging places.... | 1911 | 845 | (8) 522 |
| 156a renumbered | | | | |
| 156, and amended | Licensing of immigrant lodging places.... | 1912 | 543 | (9) 336 |
| 156a, subd. 1 | Bonds of immigrant lodging places..... | 1912 | 337 | (9) 336 |
| 161 | Hours of labor of minors..... | 1910 | 387 | (7) 632 |
| 161 | Hours of labor of minors..... | 1911 | 866 | (8) 524 |
| 161a, added | Hours of labor of messengers..... | 1910 | 342 | (7) 633 |
| 162 | Employment of children..... | 1909 | 293 | (3) 3069 |
| 162 | Employment of children..... | 1911 | 866 | (8) 525 |
| 166, repealed | Summer vacation certificate..... | 1911 | 866 | (8) 525 |
| 168 | Wash-rooms and water-closets..... | 1911 | 866 | (8) 525 |
| 180 | Mercantile inspector | 1910 | 516 | (7) 633 |
| 200-202, amended; 202a, 205-212, added | Employer's liability | 1910 | 352 | (7) 633 |
| 215-219, 219a- 219g, added | Workmen's compensation in dangerous em- ployments | 1910 | 674 | (7) 650 |
| LEGISLATIVE LAW: | | | | |
| (L. 1909, ch. 37, constituting cons. laws, ch. 32.) | | | | |
| 5 | Members of legislature, salaries when pay- able | 1911 | 618 | (8) 528 |
| 10 | Compensation of sergeants-at-arms..... | 1911 | 45 | (8) 528 |
| 45 | Publication of constitutional amendments.. | 1911 | 272 | (8) 529 |
| 46, subd. 3 | Distribution of bound volumes of session laws | 1910 | 393 | (7) 656 |
| 48, subd. 1 | Publication of session laws, New York county | 1911 | 97 | (8) 530 |
| LIEN LAW: | | | | |
| (L. 1909, ch. 38, constituting cons. laws, ch. 33.) | | | | |
| 5, repealed | Public improvement; liens..... | 1911 | 450 | (8) 533 |
| 5, added | Public improvement; liens..... | 1911 | 873 | (8) 533 |
| 12, repealed | Public improvement; notice of lien..... | 1911 | 450 | (8) 534 |
| 12, added | Public improvement; notice of lien..... | 1911 | 873 | (8) 534 |
| 16, repealed | Public improvement; assignment of con- tract | 1911 | 450 | (8) 535 |
| 16, added | Public improvement; assignment of con- tract | 1911 | 873 | (8) 535 |
| 18, repealed | Public improvement; duration of lien..... | 1911 | 450 | (8) 535 |
| 18, added | Public improvement; duration of lien..... | 1911 | 873 | (8) 535 |
| 19, subd. 3 | Discharge of lien..... | 1909 | 240 | (3) 3187 |
| 19, subd. 3 | Discharge of lien..... | 1909 | 427 | (3) 3187 |
| 21, repealed | Public improvement; discharge of lien.... | 1911 | 450 | (8) 536 |
| 21, added | Public improvement; discharge of lien.... | 1911 | 873 | (8) 536 |
| 25, repealed | Public improvement; priority of liens..... | 1911 | 450 | (8) 537 |
| 25, added | Public improvement; priority of liens..... | 1911 | 873 | (8) 537 |
| 42, repealed | Public improvement; enforcement of lien.. | 1911 | 450 | (8) 538 |
| 42, added | Public improvement; enforcement of lien.. | 1911 | 873 | (8) 538 |
| 60, repealed | Public improvement; judgment in action to foreclose lien | 1911 | 450 | (8) 538 |
| 60, added | Public improvement; judgment in action to foreclose lien | 1911 | 873 | (8) 538 |
| 62, added | Public contracts; laborers and material men to be secured..... | 1911 | 450 | (8) 539 |
| 62, repealed | Public contracts; laborers and material men to be secured..... | 1911 | 873 | (8) 539 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|---|-------|---------------|----------|
| LIEN LAW—(Continued). | | | | |
| 63, added | Public contracts; lien of laborer or material man | 1911 | 450 | (8) 539 |
| 63, repealed | Public contracts; lien of laborer or material man | 1911 | 873 | (8) 539 |
| 64, added | Public contracts; enforcement of lien | 1911 | 450 | (8) 540 |
| 64, repealed | Public contracts; enforcement of lien | 1911 | 873 | (8) 540 |
| 65, added | Public contracts; complaint in action to enforce lien | 1911 | 450 | (8) 540 |
| 65, repealed | Public contracts; complaint in action to enforce lien | 1911 | 873 | (8) 540 |
| 66, added | Public contracts; costs in action to enforce lien | 1911 | 450 | (8) 541 |
| 66, repealed | Public contracts; costs in action to enforce lien | 1911 | 873 | (8) 541 |
| 81, 82, 90 | Liens on canal boats | 1910 | 182 | (7) 663 |
| 200 | Inn-keeper's lien | 1910 | 214 | (7) 665 |
| 230 | Chattel mortgages | 1911 | 326 | (8) 541 |
| 232-234 | Liens on canal boats | 1910 | 182 | (7) 665 |
| LIQUOR TAX LAW: | | | | |
| (L. 1909, ch. 39, constituting cons. laws, ch. 34.) | | | | |
| 2 | Definitions | 1909 | 281 | (3) 3263 |
| 2 | Definitions | 1910 | 485 | (7) 668 |
| 3 | State commissioner of excise | 1910 | 503 | (7) 669 |
| 7 | Special agents; attorneys | 1909 | 281 | (8) 3269 |
| 8 | Excise taxes | 1909 | 281 | (3) 3272 |
| 8, subd. 3 | Tax upon traffic by pharmacist | 1910 | 485 | (7) 670 |
| 8, subd. 8 | Enumeration | 1910 | 485 | (7) 670 |
| 8, subd. 9, added | Issuance of certificates | 1910 | 494 | (7) 671 |
| 8, subd. 9 | Issuance of certificate | 1911 | 298 | (8) 542 |
| 12, subd. 17 | Account of excise moneys | 1909 | 240 | (3) 3282 |
| 12, subd. 17 | Account of excise moneys | 1909 | 281 | (3) 3282 |
| 12a, added | Filing assignments of certificates as collateral security | 1912 | 263 | (9) 350 |
| 13 | Local option | 1910 | 485 | (7) 675 |
| 15, ¶ 3 | Statements to be made upon application for certificate | 1910 | 494 | (7) 678 |
| 15, ¶ 5 | Statement by applicant for certificate | 1909 | 281 | (3) 3291 |
| 15, ¶ 5 | Statement by applicant for certificate | 1911 | 643 | (8) 545 |
| 15, ¶ 8 | Consents | 1909 | 281 | (3) 3291 |
| 15, ¶ 8 | Effect of revocation of certificate | 1910 | 485 | (7) 679 |
| 15, ¶ 8 | Consents; effect of cancellation of certificate | 1910 | 503 | (7) 679 |
| 15, ¶ 8 | Consents | 1911 | 643 | (8) 546 |
| 15, ¶ 8 | Cancellation of certificate, disuse of premises | 1912 | 378 | (9) 351 |
| 16 | Bonds | 1910 | 484 | (7) 680 |
| 16 | Bonds | 1911 | 223 | (8) 547 |
| 17 | Payment of tax and issuing of certificate... | 1910 | 494 | (7) 683 |
| 19 | Posting liquor tax certificate | 1911 | 407 | (8) 549 |
| 21 | Who not to traffic in liquors | 1909 | 281 | (3) 3310 |
| 21, subd. 1, clauses d, e | Who not to traffic in liquors | 1910 | 503 | (7) 684 |
| 23, subd. 1 | Places in which traffic not permitted | 1910 | 704 | (7) 684 |
| 23, subd. 2 | Places in which traffic not permitted | 1911 | 643 | (8) 551 |
| 24, subd. 1 | Surrender of certificates | 1910 | 503 | (7) 684 |
| 24, subd. 1 | Surrender of certificates | 1911 | 408 | (8) 552 |
| 24, subd. 2 | Surrender of certificates | 1910 | 503 | (7) 687 |
| 25 | Changing place of traffic | 1911 | 407 | (8) 554 |
| 26 | Changing place of traffic | 1911 | 407 | (8) 555 |
| 27, subd. 2 | Revocation of certificate | 1909 | 281 | (3) 3325 |

| Section | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|----------|
| LIQUOR TAX LAW—(Continued). | | | | |
| 27, subd. 2 | Revocation of certificate..... | 1910 | 503 | (7) 688 |
| 28 | Injunction | 1909 | 281 | (3) 3336 |
| 29 | Persons to whom liquor not to be furnished. | 1910 | 307 | (7) 692 |
| 30 | Illegal sales | 1910 | 494 | (7) 693 |
| 30, subd. F | Illegal sales | 1912 | 264 | (9) 353 |
| 30, subd. J | Illegal sales | 1910 | 485 | (7) 695 |
| 30a, added | Sale of liquors to West Point cadets..... | 1911 | 762 | (8) 557 |
| 31 | Lists of lodgers..... | 1909 | 281 | (3) 3349 |
| 33, ¶ 2 | Search warrant | 1909 | 281 | (3) 3354 |
| 33, ¶ 2 | Liquors kept for unlawful traffic..... | 1910 | 485 | (7) 699 |
| 33, ¶ 4 | Prima facie evidence of violation..... | 1909 | 281 | (3) 3356 |
| 35 | Persons liable for violations..... | 1909 | 281 | (3) 3358 |
| 36 | Penalties | 1910 | 485 | (7) 702 |
| 43 | Penalties; actions to recover..... | 1910 | 503 | (7) 704 |
| MEMBERSHIP CORPORATIONS LAW: | | | | |
| (L. 1909, ch. 40, constituting cons. laws, ch. 35.) | | | | |
| 18, 19, repealed | Societies taking property by will..... | 1911 | 857 | (8) 559 |
| 48, added | Place of annual meeting..... | 1909 | 169 | (3) 3411 |
| 62 | Acquisition of lands for cemetery purposes. | 1909 | 274 | (3) 3413 |
| 62 | Cemetery corporations, various counties... | 1911 | 706 | (8) 559 |
| 64 | Directors of cemetery corporation..... | 1912 | 301 | (9) 356 |
| 65 | Acquisition of lands for cemetery purposes. | 1909 | 274 | (3) 3416 |
| 72 | Taxation of lot owners by cemetery corpo- ration | 1912 | 301 | (9) 358 |
| 85, added | Cemetery corporations; record of inscrip- tions on monuments..... | 1912 | 151 | (9) 359 |
| 85, added | Perpetual care of cemetery lots..... | 1912 | 315 | (9) 360 |
| 121 | City of Yonkers, certain corporations..... | 1911 | 623 | (8) 560 |
| 144, added | Young Men's Christian Associations, county committees | 1911 | 207 | (8) 560 |
| 291, repealed | Trustees of corporations for breeding horses | 1910 | 486 | (7) 706 |
| 292-295, 298, repealed | Tax on race meetings..... | 1910 | 489 | (7) 706 |
| Schedule of repeals | L. 1898, ch. 543, in part, inserted..... | 1909 | 240 | (3) 3476 |
| Schedule of repeals | L. 1897, ch. 129, omitted..... | 1909 | 240 | (3) 3475 |
| MILITARY LAW: | | | | |
| (L. 1909, ch. 41, constituting cons. laws, ch. 36.) | | | | |
| 7 | Governor's military secretary..... | 1911 | 796 | (8) 562 |
| 11 | Reserve militia | 1911 | 98 | (8) 562 |
| 15 | Militia council | 1909 | 373 | (3) 3487 |
| 15 | Militia council | 1911 | 808 | (8) 562 |
| 16 | Adjutant-general | 1909 | 373 | (3) 3488 |
| 16, subd. 12, repealed | Stands of arms for G. A. R..... | 1909 | 240 | (3) 3490 |
| 18 | Adjutant-general | 1911 | 281 | (8) 563 |
| 30 | Composition of national guard..... | 1909 | 370 | (3) 3496 |
| 31 | Division and brigades..... | 1909 | 370 | (3) 3497 |
| 32 | Staff departments | 1909 | 370 | (3) 3498 |
| 32 | Staff departments | 1911 | 167 | (8) 564 |
| 33 | Corps of engineers..... | 1909 | 370 | (3) 3499 |
| 33 | Coast artillery corps..... | 1909 | 370 | (3) 3504 |
| 33 | Coast artillery corps..... | 1911 | 795 | (8) 565 |
| 40, added | Aides | 1911 | 285 | (8) 566 |
| 51 | Staff of commodore..... | 1911 | 282 | (8) 566 |
| 53 | Battalion of naval militia..... | 1911 | 282 | (8) 566 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|----------------------------------|---|-------|---------------|----------|
| MILITARY LAW—(Continued). | | | | |
| 54 | Division of naval militia..... | 1911 | 282 | (8) 567 |
| 56 | Civilian cooks | 1911 | 282 | (8) 568 |
| 57 | Retirement of officers of naval militia..... | 1909 | 233 | (3) 3507 |
| 59 | Appointed officers of naval militia..... | 1911 | 282 | (8) 568 |
| Art. 4, tit. | Commissioned officers | 1911 | 99 | (8) 568 |
| 71 | Eligibility for commission..... | 1909 | 371 | (3) 3509 |
| 74 | Appointed officers | 1909 | 371 | (3) 3511 |
| 74 | Appointed officers | 1911 | 99 | (8) 568 |
| 79 | Brevet commissions | 1909 | 371 | (3) 3516 |
| 80 | Supernumerary and retired officers..... | 1909 | 371 | (3) 3517 |
| 80 | Supernumerary and retired officers..... | 1911 | 285 | (8) 571 |
| 82 | National guard, retirement and discharge.. | 1911 | 464 | (8) 571 |
| 82 | Retirement and discharge of officers..... | 1911 | 770 | (8) 571 |
| 95 | Enlistments | 1909 | 369 | (3) 3520 |
| 95 | Enlistments | 1911 | 100 | (8) 572 |
| 95 | Enlistments | 1912 | 68 | (9) 361 |
| 96 | Re-enlistments | 1911 | 100 | (8) 573 |
| 97 | Enlistment papers | 1911 | 283 | (8) 573 |
| 99 | Non-commissioned officers | 1909 | 372 | (3) 3521 |
| 101 | Taking up from dropped..... | 1909 | 369 | (3) 3522 |
| 101 | Taking up from dropped..... | 1912 | 161 | (9) 361 |
| 108 | Discharges | 1912 | 161 | (9) 362 |
| 113, 114 | Service without the state..... | 1910 | 241 | (7) 707 |
| 121, added | Organization when aiding civil authorities. | 1911 | 284 | (8) 574 |
| 130, 135 | Military courts | 1910 | 108 | (7) 707 |
| 136 | Delinquency courts for officers..... | 1910 | 242 | (7) 708 |
| 137, 139, 142, 151-153, 158 | Military courts | 1910 | 108 | (7) 708 |
| 168 | Full-dress uniform | 1912 | 67 | (9) 364 |
| 183 | Armories in New York city..... | 1911 | 102 | (8) 574 |
| 183 | Armories in New York city..... | 1912 | 165 | (9) 364 |
| 184 | New sites for armories, New York city.... | 1911 | 381 | (8) 577 |
| 185 | Acquisition of sites for armories..... | 1912 | 296 | (9) 366 |
| 186 | Control of armories..... | 1911 | 102 | (8) 578 |
| 187 | Armories, janitors and engineers..... | 1911 | 102 | (8) 579 |
| 188 | Laborers in armories..... | 1910 | 19 | (7) 712 |
| 188 | Laborers in armories..... | 1911 | 102 | (8) 579 |
| 189 | Compensation of employees in armories... | 1911 | 102 | (8) 580 |
| 189 | Compensation of employees in armories... | 1912 | 242 | (9) |
| 192, subd. (b) | Use of armories..... | 1909 | 240 | (3) 3554 |
| 192, subd. (d) | Use of armories for national conventions.. | 1911 | 462 | (8) 581 |
| 210 | Pay and allowances..... | 1909 | 308 | (3) 3556 |
| 210 | Pay and allowances..... | 1912 | 278 | (9) 367 |
| 215 | Pay and allowances..... | 1909 | 309 | (3) 3559 |
| 216 | Allowances for organizations..... | 1911 | 101 | (8) 581 |
| 216 | Allowances for organizations..... | 1912 | 56 | (9) 368 |
| 217 | Pay and allowances..... | 1909 | 307 | (3) 3560 |
| 217 | Pay and allowances..... | 1912 | 56 | (9) 369 |
| 218 | Allowances for headquarters..... | 1911 | 101 | (8) 582 |
| 218 | Allowances for headquarters..... | 1912 | 56 | (9) 370 |
| 223 | Pay and allowances for injury in service... | 1912 | 174 | (9) 370 |
| 238 | Exemption from jury duty..... | 1911 | 100 | (8) 583 |
| 241 | Military parades by unauthorized bodies prohibited | 1911 | 210 | (8) 583 |
| 241 | Military parades and organization by un- authorized bodies prohibited..... | 1912 | 69 | (9) 371 |
| 244, added | Devises and bequests..... | 1909 | 536 | (3) 3568 |
| 244 | Devises and bequests..... | 1911 | 101 | (8) 584 |
| 245, added | Employees of state or municipality on mili- tary duty | 1911 | 103 | (8) 584 |
| 246, added | Oaths | 1911 | 103 | (8) 584 |
| 252 | Associations | 1909 | 311 | (3) 3569 |
| 252 | Formation of associations..... | 1911 | 104 | (8) 585 |

TABLE OF LAWS AMENDED OR REPEALED.

583

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|---|-------|----------|---------|
| NAVIGATION LAW: | | | | |
| (L. 1909, ch. 42, constituting cons. laws, ch. 37.) | | | | |
| 40a, added | Removal of ice gorges in Hudson river.... | 1910 | 312 | (7) 715 |
| 47, added | Harbor masters along Hudson river..... | 1911 | 620 | (8) 589 |
| 50a, added | Buoys and beacons..... | 1910 | 421 | (7) 715 |
| 86 | Claim for salvage..... | 1909 | 240 | (3)3627 |
| Schedule of repeals | L. 1890, ch. 569, §§ 137-150, inserted..... | 1909 | 240 | (3)3631 |
| PENAL LAW: | | | | |
| (L. 1909, ch. 88, constituting cons. laws, ch. 40.) | | | | |
| 71 | Abduction or compulsory marriage..... | 1909 | 524 | (3)3765 |
| 190 | Poisoning domestic animals..... | 1910 | 81 | (7) 732 |
| 271 | None but attorneys to practice in cities of first and second class..... | 1910 | 327 | (7) 732 |
| 280, added | Corporations not to practice law..... | 1909 | 483 | (3)3794 |
| 280 | Voluntary associations not to practice law. | 1911 | 317 | (8) 597 |
| 290, 298 | Issue of certificates of deposit..... | 1910 | 398 | (7) 733 |
| 303, added | False statements or rumors as to banking institutions | 1912 | 211 | (9) 385 |
| 304, added | Falsification of books and reports of corporations | 1912 | 208 | (9) 385 |
| 421 | False advertisements, sale of real estate.... | 1911 | 759 | (8) 599 |
| 421 | False advertisements, sale of real estate.... | 1912 | 321 | (9) 385 |
| 443, added | Tickets issued by People's Institute not transferable | 1909 | 424 | (3)3824 |
| 483, subd. 3, repealed | Contributing to juvenile delinquency..... | 1910 | 699 | (7) 736 |
| 484, subd. 1 | Admitting children to moving picture shows | 1909 | 278 | (3)3829 |
| 484, subd. 1 | Admitting children to pool or billiard rooms | 1910 | 383 | (7) 736 |
| 484, subd. 1 | Permitting children to attend certain resorts | 1910 | 475 | (7) 736 |
| 484, subd. 1 | Admitting children to pool rooms and bowling alleys | 1911 | 243 | (8) 600 |
| 486, subd. 5 | Transfer of incorrigible children..... | 1912 | 169 | (9) 387 |
| 494, added | Contributing to juvenile delinquency..... | 1910 | 699 | (7) 737 |
| 517, added | Discrimination against United States uniform | 1911 | 410 | (8) 600 |
| 584, added | Conspiracies | 1910 | 395 | (7) 740 |
| 611, repealed | Testimony in seduction, abduction, etc.... | 1909 | 524 | (3)3852 |
| 670, added | Misconduct by officers and directors of certain insurance corporations and societies. | 1910 | 620 | (7) 741 |
| 750 | Candidates at primary elections..... | 1910 | 480 | (7) 741 |
| 752 | Crimes against elective franchise..... | 1909 | 306 | (3)3867 |
| 760a, added | Misconduct respecting designation petitions | 1912 | 207 | (9) 388 |
| 776 | Filing candidate's statement of expenses... | 1910 | 439 | (7) 741 |
| 851 | Threats constituting extortion..... | 1911 | 121 | (8) 601 |
| 851 | Threats constituting extortion..... | 1911 | 602 | (8) 601 |
| 852 | Punishment for extortion..... | 1909 | 368 | (3)3887 |
| 852 | Punishment for extortion..... | 1911 | 602 | (8) 601 |
| 856 | Blackmail | 1909 | 368 | (3)3888 |
| 857 | Attempted extortion by oral threats..... | 1911 | 121 | (8) 602 |
| 889, subd. 4 | Forgery, third degree..... | 1912 | 342 | (9) 390 |
| 936a, added | Unlawful dues of secret fraternities..... | 1911 | 837 | (8) 602 |
| 950, added | False statements as to employment..... | 1911 | 575 | (8) 603 |
| 973 | Gaming and betting establishments..... | 1910 | 487 | (7) 743 |
| 986 | Book-making | 1910 | 488 | (7) 744 |
| 1140a, added | Immoral plays and exhibitions..... | 1909 | 279 | (3)3940 |
| 1141a, added | Indecent prints and pictures..... | 1909 | 280 | (3)3942 |
| 1146 | Disorderly houses | 1910 | 619 | (7) 746 |
| 1148, added | Male persons living on earnings of prostitution | 1910 | 382 | (7) 747 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---------------------------------|---|-------|----------|----------|
| PENAL LAW—(Continued). | | | | |
| 1221 | Intoxication in a public place..... | 1911 | 700 | (8) 603 |
| 1250 | Penalty for kidnapping..... | 1909 | 246 | (3) 3956 |
| 1250 | Kidnapping | 1911 | 625 | (8) 605 |
| 1272 | Payment of wages by corporations..... | 1909 | 205 | (3) 3960 |
| 1275 | Violations of labor law..... | 1911 | 749 | (8) 606 |
| 1275, subd. 7a, added | Violation of provisions of labor law..... | 1912 | 383 | (9) 393 |
| 1293a, added | Unauthorized use of vehicles..... | 1909 | 514 | (3) 3970 |
| 1293a | Unauthorized use of vehicles..... | 1910 | 621 | (7) 749 |
| 1293b, added | Obtaining property or credit by false state- ment | 1912 | 340 | (9) 393 |
| 1296 | Grand larceny, second degree..... | 1912 | 164 | (9) 394 |
| 1421 | Burning crops or timber..... | 1910 | 474 | (7) 751 |
| 1423 | Injury to mile-boards, etc., on highways... | 1911 | 316 | (8) 607 |
| 1425, subd. 11a, added | Damaging motor vehicle..... | 1909 | 525 | (3) 3995 |
| 1433 | Injury to property; how punished..... | 1912 | 163 | (9) 395 |
| 1460 renumbered 1092 | Husband and wife..... | 1909 | 524 | (3) 4003 |
| Art. 138, head- ing repealed | Married women | 1909 | 524 | (3) 4003 |
| 1500a, added | Muffers for motor boats, Lake George..... | 1911 | 758 | (8) 608 |
| 1510, added | Muffers for motor boats, tidal waters..... | 1911 | 840 | (8) 608 |
| 1563 | Advertising as ticket agents; false informa- tion | 1911 | 415 | (8) 609 |
| 1566 | Sale of railway transfers..... | 1909 | 204 | (3) 4014 |
| 1572, added | Soliciting surrender of tickets from immi- grants | 1911 | 540 | (8) 609 |
| 1620 | Perjury | 1909 | 240 | (3) 4017 |
| 1746 | Sale of cocaine or eucaine..... | 1910 | 131 | (7) 754 |
| 1820a, added | Notaries public and commissioners of deeds | 1910 | 471 | (7) 756 |
| 1896 | Making and disposing of dangerous weapons | 1911 | 195 | (8) 610 |
| 1897 | Carrying and use of dangerous weapons.... | 1911 | 195 | (8) 610 |
| 1899 | Destruction of dangerous weapons..... | 1911 | 195 | (8) 611 |
| 1914, added | Sale of pistols and other firearms..... | 1911 | 195 | (8) 611 |
| 1943 renumbered 2461 | Concealment of birth of issue..... | 1909 | 524 | (3) 4066 |
| 2052, added | Stealing or destruction of will..... | 1910 | 357 | (7) 758 |
| 2074, added | Theatrical presentations of the Divinity, prohibited | 1911 | 319 | (8) 612 |
| 2151 | Parades on Sunday..... | 1911 | 147 | (8) 613 |
| 2175-2177, added | Seduction | 1909 | 524 | (3) 4091 |
| 2186 | Sentence of minors..... | 1909 | 478 | (3) 4095 |
| 2189 | Indeterminate sentences | 1909 | 282 | (3) 4096 |
| 2197, repealed | Commitments for five years or less..... | 1909 | 467 | (3) 4100 |
| 2198, added | Sentence to state prisons..... | 1909 | 240 | (3) 4100 |
| 2221, added | Burials on canal lands prohibited..... | 1910 | 144 | (7) 759 |
| 2354, subd. 5 | Offenses against trade marks..... | 1909 | 240 | (3) 4108 |
| 2414a, added | False weights and measures, presumption of knowledge | 1911 | 53 | (8) 613 |
| 2444 | Convict competent witness..... | 1909 | 240 | (3) 4117 |
| 2446, added | Waiver of immunity by witness..... | 1912 | 312 | (9) 397 |
| 2460 | Compulsory prostitution of women..... | 1910 | 618 | (7) 759 |
| 2461, repealed | Seduction | 1909 | 524 | (3) 4119 |
| Schedule of repeals | L. 1888, ch. 490, § 6, inserted..... | 1909 | 240 | (3) 4129 |
| Schedule of repeals | L. 1894, ch. 426, § 3, inserted..... | 1909 | 240 | (3) 4130 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|----------|
| PERSONAL PROPERTY LAW: | | | | |
| (L. 1909, ch. 45, constituting cons. laws, ch. 41.) | | | | |
| 12, subd. 2 | Gift for charitable, etc., purposes..... | 1909 | 144 | (4) 4170 |
| 12, subd. 4, added | Application of funds collected for charitable purposes | 1911 | 220 | (8) 615 |
| 13a, added | Trusts for care of cemetery lots..... | 1909 | 218 | (4) 4172 |
| 13a | Trusts for care of cemetery lots..... | 1911 | 430 | (8) 616 |
| 15 | When proceeds of life insurance policy not alienable | 1911 | 327 | (8) 616 |
| 20 | Commissions of trustee appointed by su- preme court | 1911 | 217 | (8) 617 |
| 23, added | Revocation of trusts..... | 1909 | 247 | (4) 4188 |
| 31, subd. 6, § 1, repealed | Statute of frauds, sale of goods..... | 1911 | 571 | (8) 617 |
| 36, repealed | Sale without delivery and change of posses- sion | 1911 | 571 | (8) 618 |
| 42 | Loans on salaries..... | 1911 | 626 | (8) 618 |
| 45, added | Notice of liens to secure loans..... | 1911 | 326 | (8) 620 |
| Art. 5 (§§ 80, 81), renumbered art. 6 (§§ 165, 166) | Laws repealed; when to take effect..... | 1911 | 571 | (8) 622 |
| Art. 5 (§§ 82- 158), added | Sales of goods..... | 1911 | 571 | (8) 623 |
| 187-241, added | Bills of lading..... | 1911 | 248 | (8) 648 |
| POOR LAW: | | | | |
| (L. 1909, ch. 46, constituting cons. laws, ch. 42.) | | | | |
| 3, subd. 14 | Payments of money by county superintend- ents | 1912 | 75 | (9) 404 |
| 27 | Taxation in towns for support of poor.... | 1909 | 429 | (4) 4243 |
| 29 | Support of poor in cities..... | 1909 | 380 | (4) 4245 |
| 30, subd. 2 | Indigent persons, Westchester county..... | 1912 | 309 | (9) 404 |
| 56 | Poor children | 1909 | 347 | (4) 4256 |
| 80-83 | Relief of Spanish war veterans..... | 1910 | 102 | (7) 768 |
| 84 | Burial of soldiers, sailors or marines..... | 1912 | 306 | (9) 405 |
| 85 | Relief of Spanish war veterans..... | 1910 | 102 | (7) 771 |
| PRISON LAW: | | | | |
| (L. 1909, ch. 47, constituting cons. laws, ch. 43.) | | | | |
| 21 | Bertillon system | 1912 | 106 | (9) 406 |
| 70 | Names and locations of state prisons..... | 1909 | 479 | (4) 4306 |
| 94 | State Prison for Women; salaries..... | 1912 | 105 | (9) 406 |
| 95 | Physician and chaplain, State Prison for Women | 1909 | 527 | (4) 4308 |
| 97 | Commitment of women..... | 1909 | 240 | (4) 4309 |
| 114 | Compensation of officers in state prisons... | 1912 | 50 | (9) 407 |
| 115 | Principal keeper at Sing Sing Prison..... | 1912 | 107 | (9) 407 |
| 119 | Bonds of certain officers..... | 1910 | 631 | (7) 772 |
| 210 | Salaries of members of board of parole... | 1910 | 703 | (7) 773 |
| 211 | Parole | 1909 | 240 | (4) 4345 |
| 211 | Parole | 1909 | 489 | (4) 4345 |
| 211a, added | Parole of indeterminates..... | 1910 | 669 | (7) 774 |
| 212 | Meetings of board of parole..... | 1910 | 703 | (7) 774 |
| 218 | Absolute discharge of paroled prisoner... | 1912 | 286 | (9) 408 |
| 230 | Commutation of sentence..... | 1912 | 79 | (9) 408 |
| 243 | Commutation of sentence..... | 1910 | 403 | (7) 775 |
| 281 | Managers of reformatories..... | 1909 | 240 | (4) 4357 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|----------|
| PRISON LAW—(Continued). | | | | |
| 283 | Management of reformatories..... | 1909 | 240 | (4) 4357 |
| 289 | Compensation of officers in state reforma- tories | 1912 | 50 | (9) 408 |
| 357 | Jail liberties, Genesee county..... | 1911 | 174 | (8) 663 |
| Schedule of repeals | R. S., pt. 4, ch. 3, titles 2, 3, inserted..... | 1909 | 240 | (4) 4379 |
| Schedule of repeals | L. 1886, ch. 21, §§ 10-19, inserted..... | 1909 | 240 | (4) 4383 |
| PUBLIC BUILDINGS LAW: (L. 1909, ch. 48, constituting cons. laws, ch. 44.) | | | | |
| 8, amended; 9-12, added | Selection of architects for state work..... | 1910 | 448 | (7) 782 |
| 64 | Admission to soldiers' home..... | 1911 | 577 | (8) 665 |
| 64 | Admission to soldiers' home..... | 1912 | 190 | (9) 410 |
| Art. 6, §§ 70-72, added | Schuyler mansion | 1911 | 440 | (8) 665 |
| Art. 6 renum- bered art. 7 | Public buildings generally..... | 1911 | 440 | (8) 667 |
| Art. 7 renum- bered art. 8 | Laws repealed; when to take effect..... | 1911 | 440 | (8) 667 |
| PUBLIC HEALTH LAW: (L. 1909, ch. 49, constituting cons. laws, ch. 45.) | | | | |
| 5 | Vital statistics | 1909 | 557 | (4) 4423 |
| 14 | Inspection of institutions by state commis- sioner of health..... | 1910 | 92 | (7) 784 |
| 20 | Appointment of local health officers..... | 1909 | 165 | (4) 4428 |
| 21 | Local boards of health..... | 1909 | 480 | (4) 4430 |
| 22 | Vital statistics | 1909 | 407 | (4) 4434 |
| 22 | Vital statistics | 1910 | 639 | (7) 785 |
| 22 | Vital statistics | 1911 | 279 | (8) 668 |
| 23 | Burials | 1909 | 407 | (4) 4435 |
| 70 | Rules and regulations of department..... | 1911 | 695 | (8) 670 |
| 71 | Inspection of water supply..... | 1911 | 695 | (8) 670 |
| 73 | Sewerage | 1911 | 695 | (8) 672 |
| 76 | Discharge of sewage into waters..... | 1911 | 553 | (8) 674 |
| 76a, added | Pollution of waters..... | 1911 | 553 | (8) 674 |
| 77 | Permit for discharge of sewage..... | 1911 | 553 | (8) 676 |
| 84 | Violations as to discharge of sewage..... | 1911 | 553 | (8) 676 |
| 100, amended; 101, 102, repealed | Quarantine commissioners abolished..... | 1909 | 375 | (4) 4465 |
| 103 | Custody of quarantine establishment, port of New York..... | 1909 | 375 | (4) 4465 |
| 103 | Health officer, port of New York..... | 1910 | 425 | (7) 787 |
| 105-111 | Quarantine commissioners abolished..... | 1909 | 375 | (4) 4466 |
| 120 | Health officer, port of New York..... | 1910 | 425 | (7) 788 |
| 121 | Health officer, port of New York..... | 1909 | 375 | (4) 4469 |
| 121 | Health officer, port of New York..... | 1912 | 109 | (9) 411 |
| 122 | Health officer, port of New York..... | 1909 | 375 | (4) 4469 |
| 122 | Health officer, port of New York..... | 1910 | 425 | (7) 788 |
| 124, 128, 134, 138, 139, 142 | Quarantine commissioners abolished; duties conferred on health officer..... | 1909 | 375 | (4) 4474 |
| 144 | Health officer, port of New York..... | 1909 | 375 | (4) 4477 |
| 144 | Health officer, port of New York..... | 1910 | 425 | (7) 789 |
| 145 | Health officer, port of New York..... | 1909 | 375 | (4) 4478 |
| 166, subd. 5 | Admission to medical examinations..... | 1912 | 141 | (9) 411 |
| 191 | State dental society..... | 1912 | 171 | (9) 412 |

TABLE OF LAWS AMENDED OR REPEALED.

587

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|--|-------|----------|----------|
| PUBLIC HEALTH LAW—(Continued). | | | | |
| 195 | Dental examiners | 1910 | 137 | (7) 790 |
| 196 | Eligibility to dental examination..... | 1911 | 786 | (8) 677 |
| 219 | Veterinarians; licenses | 1912 | 178 | (9) 413 |
| 230-235 | Practice of pharmacy..... | 1910 | 422 | (7) 791 |
| 236 | Practice of pharmacy..... | 1910 | 422 | (7) 799 |
| 236 | Working hours and sleeping rooms in pharmacies | 1911 | 630 | (8) 678 |
| 237-240 | Practice of pharmacy..... | 1910 | 422 | (7) 799 |
| 240, subd. 9 | Pharmacies, violations of regulations..... | 1911 | 630 | (8) 678 |
| 241, added | Practice of pharmacy..... | 1910 | 422 | (7) 804 |
| 271-273 | Chiropody; examination for license; ex- penses | 1912 | 199 | (9) 413 |
| 277 | Falsely claiming to be member of pedic society | 1912 | 199 | (9) 415 |
| 278-281 | Chiropody; registration of license; pen- alties | 1912 | 199 | (9) 416 |
| 290 | Board of embalming examiners..... | 1911 | 841 | (8) 679 |
| 295 | Certified undertakers | 1911 | 841 | (8) 679 |
| 298 | Embalming without a license..... | 1911 | 841 | (8) 679 |
| 299, added | Violations of art. 14..... | 1911 | 841 | (8) 681 |
| 303 | Optometry, exemption from examination... | 1909 | 134 | (4) 4531 |
| 318, repealed | Prescriptions of opium, etc..... | 1910 | 422 | (7) 805 |
| 318a, added | Sale of hypodermic syringes..... | 1911 | 278 | (8) 681 |
| 319 | Hospitals for tuberculosis..... | 1909 | 171 | (4) 4543 |
| 324 | Disinfection of premises infected with tu- berculosis | 1909 | 240 | (4) 4545 |
| 324 | Disinfection by health authorities..... | 1910 | 427 | (7) 806 |
| 328 | Reports of tuberculosis cases..... | 1909 | 426 | (4) 4547 |
| 328 | Reports of tuberculosis cases..... | 1911 | 490 | (8) 681 |
| 332 | Application of provisions..... | 1909 | 240 | (4) 4549 |
| 335-339, 339a- 339d, added | Cold storage | 1911 | 335 | (8) 683 |
| 344-347, added | State institute for study of malignant dis- ease | 1911 | 128 | (8) 685 |
| Art. 18, renum- bered art. 19 | Laws repealed; when to take effect..... | 1911 | 128 | (8) 687 |
| Art. 19 (§§ 350, 351) renum- bered art. 20 (§§ 360, 361) | Laws repealed; when to take effect..... | 1912 | 445 | (9) 419 |
| Art. 19 (§§ 350- 353), added | Operation for prevention of procreation.... | 1912 | 445 | (9) 419 |
| PUBLIC LANDS LAW: | | | | |
| (L. 1909, ch. 50, constituting cons. laws, ch. 45.) | | | | |
| 32 | Sale of unappropriated state lands..... | 1909 | 240 | (4) 4582 |
| 60 | Escheats | 1911 | 399 | (8) 806 |
| 60 | Escheats | 1912 | 272 | (9) 421 |
| 60, subd. 3 | Escheats | 1909 | 240 | (4) 4587 |
| 60, subd. 3 | Escheats | 1909 | 509 | (4) 4587 |
| 60, subd. 7 | Escheats | 1909 | 240 | (4) 4588 |
| 102, subd. 8, added | State reservation at Niagara, powers of commissioners | 1912 | 236 | (9) 422 |
| Art. 10 (§§ 110- 112), renum- bered art. 11 (§§ 120-122) | Construction; laws repealed; when to take effect | 1911 | 731 | (8) 691 |
| New art. 10 (§§ 110-117), added | Watkins Glen, board of commissioners..... | 1911 | 731 | (8) 689 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|----------|
| PUBLIC OFFICERS LAW: | | | | |
| (L. 1909, ch. 51, constituting cons. laws, ch. 47.) | | | | |
| 11 | Official undertakings | 1911 | 424 | (8) 692 |
| 11 | Official undertakings | 1912 | 481 | (9) 422 |
| 63 | Leaves of absence to veterans on Memorial day | 1910 | 335 | (7) 808 |
| 71, added | Vacations of employees of state and civil divisions | 1910 | 680 | (7) 809 |
| PUBLIC SERVICE COMMISSIONS LAW: | | | | |
| (L. 1910, ch. 480, constituting cons. laws, ch. 48.) | | | | |
| § 2, subds. 17-20; | | | | |
| § 5, subds. 5-7 | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 813 |
| 33, subd. 3 | Free or reduced transportation..... | 1911 | 546 | (8) 696 |
| 33, subd. 4 | Power of commission as to reduced rates.. | 1911 | 546 | (8) 696 |
| 49, subd. 1 | Power of commission to fix rates..... | 1911 | 546 | (8) 697 |
| 54 | Transfer of franchises or stocks..... | 1911 | 788 | (8) 699 |
| 55a, added | Reorganization of railroad corporations, etc. | 1912 | 289 | (9) 425 |
| 69a, added | Reorganization of gas and electrical com- panies | 1912 | 289 | (9) 426 |
| 70 | Transfer of franchises, approval..... | 1911 | 788 | (8) 701 |
| 80-87 renum- bered 120-127 | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 885 |
| 90-92, added | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 874 |
| 92, subd. 3 | Free passes, telephone and telegraph com- panies | 1911 | 124 | (8) 702 |
| 93-101, added | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 876 |
| 101a, added | Reorganization of telegraph and telephone companies | 1912 | 289 | (9) 426 |
| 102, 103, added | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 876 |
| Art. 5 renum- bered art. 6 | Telegraph and telephone lines and com- panies | 1910 | 673 | (7) 885 |
| RAILROAD LAW: | | | | |
| (L. 1910, ch. 481, constituting cons. laws, ch. 49.) | | | | |
| 88 | Conductors and brakemen as policemen .. | 1911 | 817 | (8) 704 |
| 91 | Petition for alteration of crossing..... | 1911 | 141 | (8) 705 |
| 94 | Expense of constructing new crossings.... | 1911 | 141 | (8) 706 |
| 140, subd. 1 | Powers of consolidated corporations owning continuous lines | 1911 | 506 | (8) 709 |
| 170 | Condemnation by street surface railroads.. | 1911 | 418 | (8) 710 |
| 173 | Repair of streets..... | 1912 | 368 | (9) 429 |
| 191 | Construction of street railroads in parks, etc. | 1912 | 482 | (9) 430 |
| REAL PROPERTY LAW: | | | | |
| (L. 1909, ch. 52, constituting cons. laws, ch. 50.) | | | | |
| 111 | Commissions of trustee appointed by su- preme court | 1911 | 216 | (8) 720 |
| 113, subd. 2 | Gifts for charitable, etc., purposes..... | 1909 | 144 | (4) 4999 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|---|-------|----------|----------|
| REAL PROPERTY LAW—(Continued). | | | | |
| 114a, added | Trusts for care of cemetery lots..... | 1909 | 218 | (4) 5003 |
| 260 | Grant or mortgage of real property adversely possessed | 1909 | 481 | (4) 5074 |
| 260 | Grant or mortgage of real property adversely possessed | 1910 | 628 | (7) 1075 |
| 301, subd. 9, added | Acknowledgment and proofs in Austria-Hungary | 1912 | 70 | (9) 461 |
| 310 | Authentication of certificate of acknowledgment | 1911 | 196 | (8) 723 |
| 322 | Discharge of mortgage, in certain counties. | 1912 | 254 | (9) 461 |
| 333, added | Recording instruments affecting real property | 1910 | 227 | (7) 1077 |
| 333, added | Execution of satisfaction of mortgage..... | 1911 | 574 | (8) 724 |
| 334, added | Filing of maps..... | 1910 | 415 | (7) 1077 |
| 362 | Notice to persons interested in title..... | 1909 | 240 | (4) 5118 |
| 370 | Application to register title..... | 1910 | 627 | (7) 1077 |
| 374 | Assistant deputy register..... | 1909 | 305 | (4) 5122 |
| 379, 380, 382, 383, 385-387, amended; 388, repealed; 388, added; 390, 391, 393, 398, amended; 404, repealed; 404, added; 406, 410, 416, 432, amended; 434, repealed; 434, added | Registering titles to real property..... | 1910 | 627 | (7) 1078 |
| 451, added | Acquisition of lands for cemetery purposes. | 1909 | 274 | (4) 5154 |
| 451 | Acquisition of lands for cemetery purposes. | 1912 | 300 | (9) 463 |
| Schedule of repeals | R. S., pt. 2, ch. 1, tit. 1, §§ 1-4, 8-20, inserted | 1909 | 240 | (4) 5155 |
| Schedule of repeals | L. 1794, ch. 1, §§ 1, 3-7, inserted..... | 1909 | 240 | (4) 5155 |
| RELIGIOUS CORPORATIONS LAW: | | | | |
| (L. 1909, ch. 53, constituting cons. laws, ch. 51.) | | | | |
| 12 | Real property of religious corporations..... | 1912 | 290 | (9) 464 |
| 16 | Property of extinct churches..... | 1909 | 408 | (4) 5178 |
| 16 | Property of extinct churches..... | 1910 | 185 | (7) 1095 |
| 195 | Corporate meetings | 1911 | 711 | (8) 727 |
| 197 | Number of trustees of an incorporated church | 1910 | 249 | (7) 1096 |
| SALT SPRINGS LAW: | | | | |
| (L. 1909, ch. 54, constituting cons. laws, ch. 52.) | | | | |
| 5 | Superintendent of Onondaga salt springs, office abolished | 1911 | 458 | (8) 729 |
| 40, repealed | Superintendent of Onondaga salt springs.. | 1911 | 458 | (8) 729 |
| Schedule of repeals | L. 1867, ch. 261, omitted..... | 1909 | 240 | (4) 5257 |
| Schedule of repeals | L. 1897, ch. 261, inserted..... | 1909 | 240 | (4) 5258 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|--|-------|---------------|----------|
| SECOND CLASS CITIES LAW: | | | | |
| (L. 1909, ch. 55, constituting cons. laws, ch. 53.) | | | | |
| 60 | Temporary and funded debts..... | 1910 | 692 | (7) 1097 |
| 60 | Temporary and funded debts..... | 1911 | 60 | (8) 730 |
| 79 | Contracts and expenditures prohibited.... | 1912 | 195 | (9) 466 |
| 81, added | Appropriations for band concerts..... | 1911 | 493 | (8) 731 |
| 91 | Commissioner of public works..... | 1912 | 189 | (9) 466 |
| 130, 131 | Buildings department created..... | 1909 | 573 | (4) 5318 |
| 137, 138 | Appeals from commissioner of public safety | 1910 | 266 | (7) 1099 |
| 149, 152, 155- 157, added | Buildings department created..... | 1909 | 573 | (4) 5327 |
| STATE BOARDS AND COMMISSIONS LAW: | | | | |
| (L. 1909, ch. 56, constituting cons. laws, ch. 54.) | | | | |
| 1-4, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 5 | State water supply commission..... | 1910 | 285 | (7) 1101 |
| 5, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 6 | State water supply commission..... | 1910 | 285 | (7) 1101 |
| 6, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 7 | State water supply commission..... | 1910 | 285 | (7) 1102 |
| 7, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 8-11, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 12 | Proceedings for river improvement..... | 1911 | 36 | (8) 732 |
| 12 | Proceedings for river improvement..... | 1911 | 420 | (8) 732 |
| 12, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 12a, added | Creation of river improvement districts.... | 1909 | 464 | (4) 5359 |
| 12a | Creation of river improvement districts.... | 1911 | 142 | (8) 732 |
| 12a, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 13, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 14 | Entry upon lands..... | 1909 | 464 | (4) 5360 |
| 14, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 15, 16, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 17 | Bonds for river improvement..... | 1909 | 464 | (4) 5362 |
| 17, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 18 | Apportionment of cost..... | 1909 | 464 | (4) 5363 |
| 18, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 19 | Assessment and collection of cost..... | 1909 | 464 | (4) 5364 |
| 19, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 20 | River improvement certificates..... | 1909 | 464 | (4) 5366 |
| 20, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 21 | Operation and expenses..... | 1909 | 464 | (4) 5366 |
| 21, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 22, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 22a, added | Collectors and other officers..... | 1909 | 464 | (4) 5367 |
| 22a, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 22b, added | Ratification of proceedings..... | 1909 | 464 | (4) 5367 |
| 22b, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 23, 24, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 25, added | Improvement of water courses at private expense | 1909 | 284 | (4) 5368 |
| 25, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 26, added | Refund of expenses..... | 1909 | 274 | (4) 5369 |
| 26, repealed | State water supply commission..... | 1911 | 647 | (8) 732 |
| 30 | State probation commission..... | 1910 | 613 | (7) 1104 |
| 41 | Term and expenses of commissioners..... | 1909 | 240 | (4) 5372 |
| Schedule of repeals | L. 1894, ch. 349, inserted..... | 1909 | 240 | (4) 5373 |

TABLE OF LAWS AMENDED OR REPEALED.

591

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|---------|
| STATE CHARITIES LAW: (L. 1909, ch. 57, constituting cons. laws, ch. 55.) | | | | |
| Analysis of articles | Generally | 1909 | 258 | (5)5375 |
| 42 | Powers and duties of fiscal supervisor..... | 1909 | 149 | (5)5387 |
| 42 | Powers and duties of fiscal supervisor..... | 1911 | 405 | (8) 733 |
| 44 | Fiscal year | 1909 | 149 | (5)5388 |
| 44 | Fiscal year | 1911 | 405 | (8) 733 |
| 45 | Expenses; contingent fund..... | 1909 | 149 | (5)5388 |
| 45 | Expenses; contingent fund..... | 1911 | 9 | (8) 734 |
| 45 | Expenses; contingent fund..... | 1911 | 405 | (8) 734 |
| 46 | Receipts and expenditures..... | 1909 | 149 | (5)5389 |
| 47 | Affidavit of steward; vouchers..... | 1911 | 405 | (8) 735 |
| 48 | Purchases | 1909 | 149 | (5)5390 |
| 48 | Purchases | 1911 | 305 | (8) 735 |
| 49 | Erection, repairs, etc..... | 1909 | 149 | (5)5392 |
| 49 | Contracts in connection with state institu- tions | 1910 | 47 | (7)1107 |
| 50 | Visitations and reports..... | 1909 | 149 | (5)5394 |
| 50 | Visitations and reports by managers..... | 1911 | 405 | (8) 737 |
| 51 | Managers and trustees..... | 1909 | 149 | (5)5394 |
| 52, added | Admission to state charitable institutions.. | 1911 | 843 | (8) 738 |
| 60-62, 66-69 | Managers and officers, Syracuse State Insti- tution for Feeble-Minded Children..... | 1910 | 449 | (7)1109 |
| 70 | Syracuse Institution for Feeble-Minded Children, clothing for pupils..... | 1911 | 609 | (8) 738 |
| 71, added | Syracuse Institution for Feeble-Minded Children, sewer system..... | 1910 | 376 | (7)1111 |
| 81 | Managers, State Custodial Asylum for Fee- ble-Minded Women | 1910 | 449 | (7)1111 |
| 91, 92 | Managers, Rome State Custodial Asylum.. | 1910 | 449 | (7)1112 |
| 95, added | Rome State Custodial Asylum..... | 1909 | 339 | (5)5404 |
| 95, subds. 9, 10, added | Rome State Custodial Asylum..... | 1912 | 448 | (9) 468 |
| 101 | Managers, Craig Colony for Epileptics..... | 1910 | 449 | (7)1112 |
| 102 | Buildings and improvements, Craig Colony.. | 1909 | 149 | (5)5406 |
| 102 | Buildings and improvements, Craig Colony.. | 1910 | 449 | (7)1113 |
| 103 | Managers, Craig Colony..... | 1910 | 449 | (7)1113 |
| 103, subd. 3 | Managers, Craig Colony..... | 1909 | 149 | (5)5407 |
| 104 | Annual report, Craig Colony..... | 1909 | 149 | (5)5407 |
| 104 | Annual report of managers, Craig Colony.. | 1910 | 449 | (7)1114 |
| 107, 108 | Duties of superintendent and of agent as treasurer, Craig Colony..... | 1910 | 449 | (7)1114 |
| 110 | Support of state patients, Craig Colony.... | 1909 | 149 | (5)5412 |
| 114, repealed | Notice of opening of Craig Colony..... | 1910 | 449 | (7)1117 |
| 114, added | Craig Colony, detention and discharge of inmates | 1911 | 588 | (8) 739 |
| 115 renumbered | | | | |
| 114 | Maintenance expenses, Craig Colony..... | 1910 | 449 | (7)1117 |
| 116 | Sale of products, Craig Colony..... | 1909 | 149 | (5)5415 |
| 116 renumbered | | | | |
| 115 | Sale of products, Craig Colony..... | 1910 | 449 | (7)1117 |
| 117, added | Designation of special policemen at Craig Colony | 1910 | 260 | (7)1117 |
| Art. 9 renum- bered art. 18 | Care of inebriate women..... | 1909 | 258 | (5)5462 |
| 120-128 renum- bered 340-348 | Care of inebriate women..... | 1909 | 258 | (5)5462 |
| Art. 10, renum- bered art. 9 | Hospital for Crippled and Deformed Chil- dren | 1909 | 258 | (5)5415 |
| 130 | Hospital for Crippled and Deformed Chil- dren | 1909 | 149 | (5)5416 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|--|-------|---------------|----------|
| STATE CHARITIES LAW—(Continued). | | | | |
| 130 | Hospital for Crippled and Deformed Chil- dren | 1909 | 240 | (5) 5416 |
| 131 | Managers, Hospital for Crippled and De- formed Children | 1910 | 449 | (7) 1117 |
| 132 | Managers, Hospital for Crippled and De- formed Children | 1910 | 449 | (7) 1117 |
| 132, subd. 2 | Book of proceedings, Hospital for Crippled and Deformed Children..... | 1909 | 149 | (5) 5417 |
| 132, subd. 3 | Report, Hospital for Crippled and Deformed Children | 1909 | 149 | (5) 5417 |
| 133 | Surgeon in chief, Hospital for Crippled and Deformed Children | 1910 | 449 | (7) 1118 |
| 133, subd. 3 | Estimates for Hospital for Crippled and De- formed Children | 1909 | 149 | (5) 5418 |
| 134, repealed | Salaries, Hospital for Crippled and De- formed Children | 1910 | 449 | (7) 1118 |
| 135, 136 renum- bered 134, 135 | Hospital for Crippled and Deformed Chil- dren | 1910 | 449 | (7) 1118 |
| 136 | Hospital for Crippled and Deformed Chil- dren | 1911 | 172 | (8) 741 |
| 137, 138 renum- bered 136, 137 | Hospital for Crippled and Deformed Chil- dren | 1910 | 449 | (7) 1118 |
| 139 | Manager's report, Hospital for Crippled and Deformed Children | 1909 | 149 | (5) 5419 |
| Art. 11 renum- bered art. 10 | Raybrook Hospital | 1909 | 258 | (5) 5420 |
| 151 | Trustees, Raybrook Hospital..... | 1910 | 449 | (7) 1119 |
| 153 | Trustees, Raybrook Hospital..... | 1910 | 449 | (7) 1119 |
| 153, subd. 4 | Proceedings of trustees, Raybrook Hospital. | 1909 | 149 | (5) 5421 |
| 154 | Report of trustees, Raybrook Hospital..... | 1909 | 149 | (5) 5422 |
| 154 | Report of trustees, Raybrook Hospital..... | 1910 | 449 | (7) 1120 |
| 157, 158, 162 | Superintendent, treasurer, and free patients, Raybrook Hospital | 1910 | 449 | (7) 1120 |
| Art. 12 renum- bered art. 17 | Aged, decrepit and mentally enfeebled per- sons | 1909 | 258 | (5) 5461 |
| 170-174 renum- bered 320-324 | Aged, decrepit and mentally enfeebled per- sons | 1909 | 258 | (5) 5461 |
| Art. 13, renum- bered art. 11 | Institutions for juvenile delinquents..... | 1909 | 258 | (5) 5427 |
| 180 | State Agricultural and Industrial School... | 1910 | 449 | (7) 1122 |
| 182, 184, 191 | State Agricultural School and House of Refuge for Juvenile Delinquents..... | 1910 | 449 | (7) 1122 |
| 199, 200 | State Training School for Girls..... | 1910 | 449 | (7) 1124 |
| 200 | Managers, State Training School for Girls. | 1911 | 447 | (8) 741 |
| 201 | State Training School for Girls..... | 1910 | 449 | (7) 1124 |
| 204 | State Training School for Girls, commit- ments | 1909 | 449 | (5) 5437 |
| 204 | State Training School for Girls, commit- ments | 1911 | 486 | (8) 741 |
| 204, subd. 1 | State Training School for Girls..... | 1909 | 340 | (5) 5437 |
| 206 | State Training School for Girls, children of inmates | 1911 | 555 | (8) 742 |
| 213 | United States female juvenile delinquents.. | 1910 | 449 | (7) 1126 |
| 214 | Effect of art. 11..... | 1909 | 240 | (5) 5442 |
| Art. 14 renum- bered art. 12 | House of refuge and reformatory for women | 1909 | 258 | (5) 5442 |
| 220 | House of refuge and reformatory for women | 1909 | 258 | (5) 5442 |
| 220 | House of refuge and reformatory for women | 1910 | 449 | (7) 1127 |

TABLE OF LAWS AMENDED OR REPEALED.

593

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|---|-------|----------|---------|
| STATE CHARITIES LAW—(Continued). | | | | |
| 221 | Managers, house of refuge and reformatory for women | 1910 | 449 | (7)1127 |
| 223 | Officers and employees of certain institutions for women..... | 1909 | 149 | (5)5444 |
| 226 | Commitments, house of refuge and reformatory for women..... | 1910 | 449 | (7)1127 |
| Art. 15 renumbered art. 21 | Anchorage at Elmira..... | 1909 | 258 | (5)5474 |
| 250 renumbered 400 | Anchorage at Elmira..... | 1909 | 258 | (5)5475 |
| 251 renumbered 401 | Anchorage at Elmira..... | 1909 | 258 | (5)5475 |
| 251 | Managers, Woman's Relief Corps Home... | 1910 | 449 | (7)1128 |
| 252 renumbered 402 | Anchorage at Elmira..... | 1909 | 258 | (5)5475 |
| 253 renumbered 403 | Anchorage at Elmira..... | 1909 | 258 | (5)5476 |
| 253, repealed | Managers, Woman's Relief Corps Home... | 1910 | 449 | (7)1128 |
| 254 renumbered 404 | Anchorage at Elmira..... | 1909 | 258 | (5)5476 |
| 254 renumbered 253 | Managers, Woman's Relief Corps Home... | 1910 | 449 | (7)1128 |
| 255 | Commitments to Anchorage at Elmira..... | 1909 | 240 | (5)5451 |
| 255 renumbered 405 | Anchorage at Elmira..... | 1909 | 258 | (5)5476 |
| 255 renumbered 254 | Report, Woman's Relief Corps Home..... | 1910 | 449 | (7)1128 |
| 255 | Admission to Woman's Relief Corps Home. | 1911 | 601 | (8) 743 |
| 255 | Admission to Woman's Relief Corps Home. | 1912 | 310 | (9) 469 |
| 256 renumbered 406 | Anchorage at Elmira..... | 1909 | 258 | (5)5477 |
| 256 | Inmates, Woman's Relief Corps Home..... | 1910 | 133 | (7)1128 |
| 256 renumbered 255 | Admission to Woman's Relief Corps Home. | 1910 | 449 | (7)1128 |
| 257 renumbered 407 | Anchorage at Elmira..... | 1909 | 258 | (5)5477 |
| 257 renumbered 256 | Managers, Woman's Relief Corps Home... | 1910 | 449 | (7)1129 |
| 258 renumbered 408 | Anchorage at Elmira..... | 1909 | 258 | (5)5477 |
| 258 renumbered 257 | Record, Woman's Relief Corps Home..... | 1910 | 449 | (7)1129 |
| 259-269 renumbered 409-419 | Anchorage at Elmira..... | 1909 | 258 | (5)5477 |
| 271 | Managers, Thomas Indian School..... | 1910 | 449 | (7)1129 |
| 272 | Managers, Thomas Indian School..... | 1910 | 449 | (7)1129 |
| 274 | Superintendent, Thomas Indian School... | 1910 | 449 | (7)1130 |
| Art. 16 renumbered art. 19 | Burnham Industrial Farm..... | 1909 | 258 | (5)5466 |
| 280-292 renumbered 360-372 | Burnham Industrial Farm..... | 1909 | 258 | (5)5467 |
| Art. 17 renumbered art. 20 | Shelter for Unprotected Girls..... | 1909 | 258 | (5)5470 |
| 300 renumbered 380 | Shelter for Unprotected Girls..... | 1909 | 258 | (5)5470 |
| 301 renumbered 381 | Shelter for Unprotected Girls..... | 1909 | 258 | (5)5471 |
| 301 | Placing out destitute children..... | 1910 | 449 | (7)1131 |
| 302, 303 renumbered 382, 383 | Shelter for Unprotected Girls..... | 1909 | 258 | (5)5471 |
| 304 renumbered 384 | Shelter for Unprotected Girls..... | 1909 | 258 | (5)5472 |
| 304 | Visitation of destitute children..... | 1909 | 258 | (5)5460 |
| . Sup. III—38 | | | | |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|---|--|-------|----------|----------|
| STATE CHARITIES LAW—(Continued). | | | | |
| 305, 306 renumbered 385, 386 | Shelter for Unprotected Girls..... | 1909 | 258 | (5) 5472 |
| 307 renumbered 387 | Shelter for Unprotected Girls..... | 1909 | 258 | (5) 5473 |
| 307 | Placing out destitute children..... | 1909 | 258 | (5) 5461 |
| 308 renumbered 388 | Shelter for Unprotected Girls..... | 1909 | 258 | (5) 5473 |
| 308 | Placing out destitute children..... | 1909 | 258 | (5) 5461 |
| 309-311 renumbered 389-391 | Shelter for Unprotected Girls..... | 1909 | 258 | (5) 5473 |
| Art. 18 renumbered art. 13 | Woman's Relief Corps Home..... | 1909 | 258 | (5) 5450 |
| 320-325 renumbered 250-255 | Woman's Relief Corps Home..... | 1909 | 258 | (5) 5450 |
| 326 | Admission to Woman's Relief Corps Home. | 1909 | 240 | (5) 5451 |
| 326 renumbered 256 | Woman's Relief Corps Home..... | 1909 | 258 | (5) 5451 |
| 327, 328 renumbered 257, 258 | Woman's Relief Corps Home..... | 1909 | 258 | (5) 5452 |
| Art. 19 renumbered art. 14 | Thomas Indian School..... | 1909 | 258 | (5) 5452 |
| 340, 341 renumbered 270, 271 | Thomas Indian School..... | 1909 | 258 | (5) 5452 |
| 342 renumbered 272 | Thomas Indian School..... | 1909 | 258 | (5) 5453 |
| 342, subd. 3 | Proceedings of managers, Thomas Indian School | 1909 | 149 | (5) 5454 |
| 343 renumbered 273 | Thomas Indian School..... | 1909 | 258 | (5) 5454 |
| 343, subd. 2 | Duties of officers, Thomas Indian School... | 1909 | 149 | (5) 5454 |
| 344-346 renumbered 274-276 | Thomas Indian School..... | 1909 | 258 | (5) 5455 |
| Art. 20 renumbered art. 15 | Licensing dispensaries | 1909 | 258 | (5) 5456 |
| 350-356 renumbered 290-296 | Licensing dispensaries | 1909 | 258 | (5) 5456 |
| Art. 21 renumbered art. 16 | Licenses for placing out destitute children. | 1909 | 258 | (5) 5459 |
| 360-367 renumbered 300-307 | Licenses for placing out destitute children. | 1909 | 258 | (5) 5459 |
| 368 renumbered 308 | Licenses for placing out destitute children. | 1909 | 258 | (5) 5461 |
| 368 | Burnham Industrial Farm..... | 1909 | 258 | (5) 5461 |
| 372 | Powers and liabilities, Burnham Industrial Farm | 1910 | 449 | (7) 1131 |
| 380-386 renumbered 450-456 | General provisions | 1909 | 258 | (5) 5481 |
| 387 renumbered 457 | Fees of witnesses at investigations..... | 1909 | 258 | (5) 5484 |
| 387 | Shelter for Unprotected Girls..... | 1909 | 258 | (5) 5473 |
| 388, 389 renumbered 458, 459 | General provisions | 1909 | 258 | (5) 5484 |
| 400, 401 renumbered 470, 471 | Laws repealed; when to take effect..... | 1909 | 258 | (5) 5485 |
| STATE FINANCE LAW: | | | | |
| (L. 1909, ch. 58, constituting cons. laws, ch. 56.) | | | | |
| 2a, added | Payment of salaries of state employees.... | 1910 | 317 | (7) 1132 |
| 10 | Deposit of moneys by state officers..... | 1911 | 294 | (8) 745 |
| 11 | Deposit of moneys by charitable institutions | 1911 | 295 | (8) 745 |
| 19 | Securities of depositories of state institutions | 1910 | 77 | (7) 1133 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|----------|
| STATE FINANCE LAW—(Continued). | | | | |
| 19 | Deposit of funds by state institutions..... | 1911 | 293 | (8) 746 |
| 37 | Payments to treasurer by health officer, port of New York..... | 1910 | 440 | (7) 1134 |
| 37 | Payments to state treasurer..... | 1912 | 162 | (9) 470 |
| 48, 49, added | Statements of desired appropriations to be filed with comptroller..... | 1910 | 149 | (7) 1134 |
| 50, added | Separate specifications for certain contract work | 1912 | 514 | (9) 471 |
| Art. 5 | Education funds | 1911 | 634 | (8) 747 |
| 81 | Education funds | 1910 | 201 | (7) 1135 |
| 87 | Education funds | 1910 | 201 | (7) 1136 |
| 90 | Education funds | 1910 | 201 | (7) 1137 |
| 91 | Education funds | 1910 | 201 | (7) 1139 |
| 92 | Education funds | 1909 | 520 | (5) 5523 |
| Schedule of repeals | L. 1864, ch. 185, § 4, omitted..... | 1909 | 240 | (5) 5537 |
| STATE LAW: | | | | |
| (L. 1909, ch. 59, constituting cons. laws, ch. 57.) | | | | |
| 2 | Connecticut boundary line..... | 1912 | 352 | (9) 472 |
| 3 | Massachusetts boundary line..... | 1910 | 447 | (7) 1140 |
| 50 | Acquisition by United States of lands for parade grounds | 1910 | 109 | (7) 1145 |
| 50 | Purchase of lands by United States for naval purposes | 1911 | 527 | (8) 753 |
| 51 | Acquisition by United States of lands for parade grounds | 1910 | 109 | (7) 1146 |
| 55 | Deeds of land acquired by United States... | 1909 | 240 | (5) 5638 |
| Schedule of repeals | L. 1828, ch. 20, § 15, ¶¶ 1, 2, omitted..... | 1909 | 240 | (5) 5674 |
| STATE PRINTING LAW: | | | | |
| (L. 1909, ch. 60, constituting cons. laws, ch. 58.) | | | | |
| 11 | Publication of reports..... | 1909 | 413 | (5) 5724 |
| 11 | Extra copies of reports..... | 1910 | 392 | (7) 1147 |
| STOCK CORPORATION LAW: | | | | |
| (L. 1909, ch. 61, constituting cons. laws, ch. 59.) | | | | |
| 10 | Reorganization of corporation, plan or agreement | 1911 | 858 | (8) 785 |
| 19-23, added | Corporations having stock without par value | 1912 | 351 | (9) 478 |
| 26 | Change of number of directors..... | 1909 | 421 | (5) 5723 |
| TAX LAW: | | | | |
| (L. 1909, ch. 62, constituting cons. laws, ch. 60.) | | | | |
| 4, subd. 21, added | Exemption of household furniture and per- sonal effects | 1912 | 267 | (9) 488 |
| 9 | Place of taxation of real property..... | 1911 | 315 | (8) 797 |
| 16, added | Taxation of lands used for forestry purposes | 1912 | 249 | (9) 489 |
| 17, added | Taxation of lands maintained as wood lots. | 1912 | 363 | (9) 491 |
| 20 | Ascertaining facts for assessment..... | 1911 | 116 | (8) 798 |
| 20 | Ascertaining facts for assessment..... | 1911 | 805 | (8) 798 |
| 20 | Ascertaining facts for assessment..... | 1912 | 270 | (9) 492 |
| 21 | Preparation of assessment-roll..... | 1911 | 315 | (8) 798 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|-----------------------------|---|-------|----------|----------|
| TAX LAW—(Continued). | | | | |
| 21 | Preparation of assessment-roll..... | 1912 | 266 | (9) 493 |
| 21a, added | Assessment-rolls in cities..... | 1911 | 315 | (8) 800 |
| 21b, added | Assessment of real property, Suffolk county | 1912 | 269 | (9) 495 |
| 22 | Assessment of state lands..... | 1912 | 245 | (9) 495 |
| 30-32, repealed | Real property of nonresidents and corporations | 1911 | 315 | (8) 800 |
| 30, added | Tax maps in each tax district..... | 1911 | 315 | (8) 800 |
| 36 | Notice of completion of assessment-roll.... | 1909 | 403 | (5) 5859 |
| 40 | Apportionment of assessments of special franchises, etc. | 1912 | 271 | (9) 497 |
| 43 | Special franchise valuations..... | 1909 | 275 | (5) 5869 |
| 43 | Assessment of special franchises..... | 1910 | 7 | (7) 1160 |
| 43 | Assessment of special franchises..... | 1910 | 453 | (7) 1160 |
| 43 | Assessment of special franchise..... | 1911 | 804 | (8) 801 |
| 45 | Special franchise assessment, hearings.... | 1911 | 804 | (8) 802 |
| 45a, added | Special franchise assessment, final valuation, etc. | 1911 | 804 | (8) 802 |
| 46 | Special franchise assessments, review..... | 1911 | 804 | (8) 804 |
| 46a, added | Special franchise valuations..... | 1911 | 875 | (8) 804 |
| 47 | Employment of experts in certiorari proceedings | 1911 | 471 | (8) 805 |
| 50 | Equalization by board of supervisors..... | 1911 | 801 | (8) 805 |
| 54 | Description of real property..... | 1911 | 315 | (8) 807 |
| 61 | Statement of valuation..... | 1911 | 118 | (8) 807 |
| 63 | Errors in assessment-rolls..... | 1911 | 315 | (8) 808 |
| 64, added | Statistics of taxation, revenue and debt.... | 1911 | 119 | (8) 808 |
| 70 | Notice to nonresidents..... | 1909 | 207 | (5) 5887 |
| 73 | Payment of taxes by gas corporations..... | 1912 | 221 | (9) 499 |
| 81 | Fees of collector..... | 1909 | 240 | (5) 5895 |
| 85 | Extension of time for collection..... | 1910 | 332 | (7) 1164 |
| 94 | Receipt for taxes..... | 1911 | 579 | (8) 808 |
| 156 | Refund of purchase money at tax sales..... | 1912 | 268 | (9) 499 |
| 173 | Tax commissioners to visit counties..... | 1911 | 120 | (8) 810 |
| 180 | Organization tax | 1910 | 472 | (7) 1167 |
| 180 | Organization tax | 1911 | 91 | (8) 810 |
| 181 | License tax on foreign corporations..... | 1910 | 340 | (7) 1168 |
| 220 | Taxable transfers | 1910 | 706 | (7) 1171 |
| 220 | Taxable transfers | 1911 | 732 | (8) 812 |
| 221 | Exemptions from taxable transfers..... | 1910 | 600 | (7) 1174 |
| 221 | Exceptions and limitations of transfer tax. 1910 | 706 | (7) 1174 | |
| 221 | Exceptions and limitations of transfer tax. 1911 | 732 | (8) 814 | |
| 221 | Exceptions and limitations of transfer tax. 1912 | 206 | (9) 502 | |
| 221a, added | Rate of transfer tax..... | 1911 | 732 | (8) 815 |
| 225 | Refund of transfer tax..... | 1911 | 308 | (8) 815 |
| 229 | Taxable transfers | 1909 | 283 | (5) 5997 |
| 229 | Transfer tax appraisers, etc..... | 1910 | 706 | (7) 1176 |
| 229 | Transfer tax appraisers, appointment.... | 1911 | 803 | (8) 816 |
| 229 | Transfer tax appraiser, Reneselaer county. 1912 | 214 | (9) 503 | |
| 230 | Transfer tax appraisers, proceedings..... | 1911 | 800 | (8) 818 |
| 234 | Salary of transfer tax clerk, Albany county 1910 | 70 | (7) 1177 | |
| 234 | Salaries of transfer tax clerks, various counties | 1911 | 681 | (8) 820 |
| 234 | Salary of transfer tax clerk, Albany county 1912 | 45 | (9) 504 | |
| 234, subd. 6 | Salary of transfer tax clerk, Queens county 1911 | 160 | (8) 821 | |
| 234, subd. 14, added | Transfer tax clerk, Nassau county..... | 1911 | 744 | (8) 821 |
| 240 | Transfer tax reports of county treasurer... 1911 | 800 | (8) 821 | |
| 241 | Transfer tax, report of comptroller; payments; refunds | 1911 | 800 | (8) 821 |
| 243 | Transfer tax, definitions..... | 1910 | 706 | (7) 1178 |
| 243 | Transfer tax, definitions..... | 1911 | 732 | (8) 823 |
| 259 | Tax on trust mortgage..... | 1909 | 412 | (5) 6021 |
| 264 | Optional tax on prior advanced mortgages. 1910 | 601 | (7) 1181 | |

TABLE OF LAWS AMENDED OR REPEALED.

597

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|---|-------|----------|----------|
| TAX LAW—(Continued). | | | | |
| 265, added | Tax a lien..... | 1909 | 412 | (5) 6029 |
| 266, added | Enforcement | 1909 | 412 | (5) 6030 |
| 267, added | Recovery against trust mortgagee..... | 1909 | 412 | (5) 6030 |
| 270, L. 1905, ch. 241, § 315 re-enacted as | Stock transfer tax, amount, stamps..... | 1910 | 38 | (7) 1184 |
| 270 | Stock transfer tax, amount, stamps..... | 1911 | 352 | (8) 825 |
| 270 | Stock transfer tax, amount, stamps..... | 1912 | 292 | (9) 507 |
| 271a, added | Sale of transfer tax stamps..... | 1911 | 12 | (8) 827 |
| 272 | Failure to pay stock transfer tax..... | 1911 | 352 | (8) 827 |
| 272 | Failure to pay stock transfer tax..... | 1912 | 292 | (9) 509 |
| 273 | Canceling stamps; penalty for failure.... | 1911 | 352 | (8) 827 |
| 275 | Illegal use of stock transfer tax stamps.... | 1911 | 12 | (8) 828 |
| 275 | Illegal use of stock transfer tax stamps.... | 1912 | 292 | (9) 509 |
| 276 | Determination of tax on transfers of stock. 1910 | 1910 | 453 | (7) 1186 |
| 276 | Determination of tax on transfers of stock. 1911 | 1911 | 352 | (8) 826 |
| 276 | Determination of tax on transfers of stock. 1912 | 1912 | 292 | (9) 510 |
| 277 | Penalties for violation of stock transfer tax. 1912 | 1912 | 292 | (9) 511 |
| 280, added | Refunds of taxes on stock transfers..... | 1910 | 186 | (7) 1187 |
| 293 | Return to writ of certiorari..... | 1909 | 330 | (5) 6043 |
| 293 | Return to writ of certiorari..... | 1911 | 302 | (8) 831 |
| 301 | Personal tax | 1909 | 374 | (5) 6052 |
| 330-337, added | Taxation of secured debts..... | 1911 | 802 | (8) 832 |

TENEMENT HOUSE LAW:

(L. 1909, ch. 99, constituting cons. laws, ch. 61.)

| | | | | |
|-----------------|---|------|-----|----------|
| 2, subd. 1 | Definitions | 1912 | 13 | (9) 514 |
| 2, subds. 4, 12 | Definitions | 1912 | 454 | (9) 514 |
| 3 | Buildings converted or altered..... | 1912 | 454 | (9) 514 |
| 16 | Fire-escapes | 1909 | 354 | (5) 6082 |
| 16, subd. 1 | Fire-escapes | 1912 | 454 | (9) 514 |
| 17 | Bulkheads | 1910 | 445 | (7) 1190 |
| 18 | Stairs and public halls..... | 1912 | 454 | (9) 516 |
| 21 | Stairways and stairs..... | 1912 | 454 | (9) 516 |
| 22 | Stair halls | 1912 | 454 | (9) 516 |
| 22a, added | Tower fire-escapes | 1912 | 454 | (9) 518 |
| 25 | Partitions | 1912 | 454 | (9) 518 |
| 27 | Cellar and basement stairs..... | 1912 | 454 | (9) 518 |
| 28 | Closet under first story stairs..... | 1912 | 454 | (9) 518 |
| 30 | Fire stops | 1912 | 454 | (9) 518 |
| 32 | Scuttles, etc. | 1909 | 354 | (5) 6089 |
| 33 | Alterations; buildings moved..... | 1912 | 454 | (9) 519 |
| 36 | Shafts | 1912 | 454 | (9) 519 |
| 37 | Plastering behind wainscoting..... | 1912 | 454 | (9) 519 |
| 38 | Wooden buildings on same lot..... | 1912 | 454 | (9) 520 |
| 51 | Height of tenement..... | 1912 | 454 | (9) 520 |
| 52 | Yards | 1912 | 454 | (9) 521 |
| 55 | Yard spaces | 1912 | 454 | (9) 521 |
| 57, subd. 1 | Outer courts | 1912 | 454 | (9) 522 |
| 59 | Outer and inner courts..... | 1912 | 454 | (9) 522 |
| 62 | Rooms, lighting and ventilation..... | 1912 | 454 | (9) 523 |
| 63 | Windows in rooms..... | 1912 | 454 | (9) 523 |
| 64 | Size of rooms..... | 1912 | 454 | (9) 524 |
| 66 | Public halls | 1912 | 454 | (9) 524 |
| 66a, added | Elevator-vestibules | 1912 | 454 | (9) 525 |
| 68 | Windows for stair halls..... | 1912 | 454 | (9) 525 |
| 70 | Percentage of lot occupied..... | 1912 | 454 | (9) 525 |
| 73 | Rooms | 1909 | 354 | (5) 6103 |
| 75 | New light shafts in existing buildings..... | 1912 | 454 | (9) 525 |
| 76 | Lights in halls..... | 1911 | 338 | (8) 836 |
| 77 | Skylights and ventilators..... | 1909 | 354 | (5) 6106 |

| Section. | SUBJECT. | Year. | Chapter. | Page. |
|--|---|-------|----------|----------|
| TENEMENT HOUSE LAW—(Continued). | | | | |
| 78 | Chimneys and fireplaces..... | 1912 | 168 | (9) 526 |
| 78 | Chimneys and fireplaces..... | 1912 | 454 | (9) 526 |
| 79 | Vent flues | 1912 | 454 | (9) 527 |
| 93 | Water-closet accommodations | 1912 | 454 | (9) 527 |
| 95 | Basement rooms | 1909 | 354 | (5) 6110 |
| 100 | Basements and cellars..... | 1909 | 354 | (5) 6113 |
| 121 | Certificate of compliance..... | 1909 | 354 | (5) 6117 |
| 122 | Unlawful occupation | 1909 | 354 | (5) 6118 |
| 170 | Application of chapter to second class cities | 1911 | 388 | (8) 836 |
| TOWN LAW: | | | | |
| (L. 1909, ch. 63, constituting cons. laws, ch. 62.) | | | | |
| 41 | Terms of assessors..... | 1910 | 271 | (7) 1192 |
| 43, subd. 13, added | Town records | 1909 | 422 | (5) 6143 |
| 46 | Special town meetings..... | 1910 | 188 | (7) 1192 |
| 64 | Canvass of votes..... | 1909 | 240 | (5) 6152 |
| 80 | Town officers | 1909 | 491 | (5) 6157 |
| 80 | Election and terms of assessors..... | 1910 | 271 | (7) 1193 |
| 82 | Term of office..... | 1909 | 491 | (5) 6159 |
| 82 | Terms of assessors..... | 1910 | 271 | (7) 1194 |
| 85 | Compensation of town officers..... | 1909 | 491 | (5) 6161 |
| 89 | Fires in woods..... | 1909 | 491 | (5) 6163 |
| 89 | Forest fires | 1910 | 630 | (7) 1195 |
| 89, repealed | Forest fires | 1912 | 371 | (9) 529 |
| 91 | Delivery of books, etc., by officer to suc- cessor | 1909 | 491 | (5) 6164 |
| 92a, added | Town clerks' undertakings..... | 1912 | 136 | (9) 530 |
| 98, subd. 1 | Supervisor to receive moneys..... | 1909 | 491 | (5) 6167 |
| 98, subd. 8, added | Forest fires | 1910 | 630 | (7) 1195 |
| 98, subd. 8 | Forest fires | 1912 | 371 | (9) 530 |
| 109, repealed | Commissioners of highways..... | 1909 | 491 | (5) 6173 |
| 110 | Pound master | 1909 | 491 | (5) 6174 |
| 111 | Town superintendent of highways..... | 1909 | 491 | (5) 6174 |
| 112 | Overseers of poor..... | 1912 | 203 | (9) 531 |
| 119, 120, repealed | Tree warden | 1909 | 491 | (5) 6179 |
| 121 | Fence viewers | 1909 | 491 | (5) 6179 |
| 122, added | Peace officers in certain towns..... | 1909 | 147 | (5) 6179 |
| 122-124, added | Police justice | 1909 | 523 | (5) 6180 |
| 131 | Town boards, special meetings..... | 1909 | 140 | (5) 6182 |
| 133 | Lists of accounts against town..... | 1910 | 316 | (7) 1195 |
| 136a, added | Appropriations for Memorial day..... | 1912 | 185 | (9) 532 |
| 137 | Grand army posts, Greene county..... | 1911 | 465 | (8) 838 |
| 141, added | Power of town boards to borrow money.... | 1912 | 258 | (9) 533 |
| 153 | Lists of accounts against town..... | 1910 | 316 | (7) 1196 |
| 154 | Compensation of town auditors..... | 1910 | 24 | (7) 1197 |
| 154 | Compensation of town auditors..... | 1912 | 72 | (9) 533 |
| 154 | Meetings and compensation of town au- ditors | 1912 | 258 | (9) 533 |
| 155 | Lists of accounts against town..... | 1910 | 316 | (7) 1197 |
| 170, subd. 8, repealed | Maintenance of watering trough..... | 1909 | 491 | (5) 6194 |
| 171 | Fees in criminal proceedings..... | 1909 | 523 | (5) 6196 |
| 177 | Appeals from audit of town board..... | 1910 | 61 | (7) 1197 |
| 230 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1198 |
| 230 | Petition for establishment of sewer system. | 1911 | 507 | (8) 839 |
| 230a, added | Construction of portion of sewer system... | 1912 | 205 | (9) 534 |
| 231 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1199 |
| 231 | Sewer commissioners | 1911 | 507 | (8) 840 |
| 233 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1199 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---|---|-------|---------------|----------|
| TOWN LAW—(Continued). | | | | |
| 234 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1199 |
| 235 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1200 |
| 237 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1200 |
| 240 | Reapportionment of assessments for sewers | 1911 | 251 | (8) 840 |
| 241-244 | Sewer systems outside of cities and villages | 1910 | 134 | (7) 1201 |
| 245, repealed | Lien of sewer assessment..... | 1910 | 134 | (7) 1203 |
| 250-252, added | Sidewalks | 1910 | 183 | (7) 1204 |
| 253, added | Sidewalks | 1910 | 183 | (7) 1205 |
| 253 | Sidewalk tax | 1911 | 139 | (8) 841 |
| 254, added | Sidewalks | 1910 | 183 | (7) 1206 |
| 261 | Lighting districts, Westchester county.... | 1910 | 671 | (7) 1207 |
| 288a, added | Refunding of indebtedness, water supply districts | 1912 | 22 | (9) 536 |
| 298, added | Water districts | 1909 | 356 | (5) 6219 |
| 299, added | Enlarging water supply system..... | 1912 | 275 | (9) 536 |
| 310 | Town fire companies..... | 1910 | 408 | (7) 1208 |
| 310 | Town fire companies..... | 1912 | 238 | (9) 537 |
| 313 | Appropriations for fire companies..... | 1910 | 408 | (7) 1208 |
| 313 | Appropriations for fire company..... | 1912 | 238 | (9) 537 |
| 314 | Assessments for maintaining fire company. | 1910 | 408 | (7) 1208 |
| 314 | Assessments for maintaining fire company. | 1912 | 238 | (9) 538 |
| 314a, added | Fire companies in incorporated cities and villages | 1912 | 238 | (9) 538 |
| 315, added | Fire ordinances | 1910 | 408 | (7) 1209 |
| 315 | Fire ordinances | 1912 | 238 | (9) 538 |
| 332 | Care of cemeteries..... | 1909 | 473 | (5) 6224 |
| 360, 361, 369 | Division fences | 1911 | 86 | (8) 842 |
| 460 | Town boards in certain towns..... | 1909 | 491 | (5) 6250 |
| 460 | Town boards in certain towns..... | 1909 | 511 | (5) 6250 |
| 461 | Town boards in certain towns..... | 1909 | 491 | (5) 6251 |
| 461 | Town boards in certain towns..... | 1909 | 511 | (5) 6251 |
| 462 | Town boards in certain towns..... | 1909 | 491 | (5) 6251 |
| 462 | Town boards in certain towns..... | 1909 | 511 | (5) 6251 |
| 468, 470, 472 | Government of certain towns..... | 1909 | 511 | (5) 6253 |
| 474 | Acquisition of land for town purposes.... | 1911 | 671 | (8) 843 |
| 477 | Lighting streets | 1910 | 283 | (7) 1209 |
| 482 | Sidewalks; sewer and water connections in certain towns | 1909 | 511 | (5) 6257 |
| 483 | Maps of proposed sewer district..... | 1911 | 564 | (8) 844 |
| 484 | Hearing objections to proposed sewer..... | 1911 | 564 | (8) 844 |
| 486 | Laying new highways; lighting highways. | 1910 | 283 | (7) 1209 |
| 501, 502 | Assessment roll in certain towns..... | 1909 | 511 | (5) 6266 |
| 523 | Officers in certain towns..... | 1909 | 491 | (5) 6273 |
| 530 | Town meetings in certain towns..... | 1909 | 240 | (5) 6274 |
| 533 | Officers in certain towns..... | 1909 | 240 | (5) 6276 |
| 533 | Officers in certain towns..... | 1909 | 491 | (5) 6276 |
| 534 | Accounting by officers of certain towns.... | 1909 | 240 | (5) 6276 |
| 543, 563, 573, 583, 584 | Officers in certain towns..... | 1909 | 491 | (5) 6287 |
| 586, added | Compensation of town officers, Orange and Rockland counties | 1911 | 230 | (8) 845 |
| 590 | Laws repealed | 1909 | 240 | (5) 6288 |
| Schedule of repeals | L. 1901, ch. 34, §§ 6-8, omitted..... | 1909 | 240 | (5) 6294 |
| Schedule of repeals | L. 1866, ch. 30, §§ 2, 3, inserted..... | 1909 | 240 | (5) 6291 |
| Schedule of repeals | L. 1908, ch. 432, inserted..... | 1909 | 240 | (5) 6296 |
| TRANSPORTATION CORPORATIONS LAW: (L. 1909, ch. 219, constituting cons. laws, ch. 63.) | | | | |
| 153-159, added | Freight terminal corporations..... | 1911 | 778 | (8) 846 |

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|--|---|-------|---------------|----------|
| VILLAGE LAW: | | | | |
| (L. 1909, ch. 64, constituting cons. laws, ch. 64.) | | | | |
| 2 | Requisite population | 1909 | 555 | (5) 6365 |
| 3 | Proposition for incorporation..... | 1909 | 555 | (5) 6365 |
| 5, subd. 3 | Area of territory | 1909 | 555 | (5) 6366 |
| 10 | Time of holding elections..... | 1910 | 416 | (7) 1212 |
| 14 | Election to incorporate..... | 1911 | 114 | (8) 853 |
| 33, added | Incorporation in certain cases..... | 1910 | 258 | (7) 1212 |
| 40a, added | Change of classification of villages..... | 1910 | 321 | (7) 1212 |
| 41, subd. 2 | Eligibility of women to vote on certain propositions | 1910 | 135 | (7) 1212 |
| 51 | Registration of voters..... | 1910 | 423 | (7) 1213 |
| 51a, added | Registration of voters..... | 1910 | 423 | (7) 1214 |
| 51a, added | Registration of voters..... | 1911 | 427 | (8) 854 |
| 52 | Annual elections | 1909 | 472 | (5) 6382 |
| 56 | Borrowing money for highways..... | 1910 | 4 | (7) 1218 |
| 63 | Boards of park commissioners..... | 1909 | 469 | (5) 6388 |
| 80 | Filing maps of village..... | 1911 | 205 | (8) 855 |
| 86 | Compensation and duties of village officers. | 1911 | 66 | (8) 855 |
| 89, subd. 22a, added | Band concerts | 1911 | 519 | (8) 856 |
| 89, subd. 7 | Fire limits | 1910 | 651 | (7) 1216 |
| 89, subd. 15 | Drains | 1910 | 454 | (7) 1217 |
| 89, subd. 24 | Contracts for fire protection..... | 1911 | 495 | (8) 856 |
| 90, subd. 5a, added | Barbed wire fences..... | 1910 | 69 | (7) 1217 |
| 90a, added | Building and sanitary codes..... | 1910 | 202 | (7) 1218 |
| 100 | Fiscal year | 1909 | 472 | (5) 6409 |
| 104 | Annual assessment roll..... | 1909 | 472 | (5) 6412 |
| 105 | Hearing of complaints as to assessment rolls | 1909 | 472 | (5) 6413 |
| 106 | Completion and verification of assessment rolls | 1909 | 472 | (5) 6413 |
| 107 | Failure of assessors to meet..... | 1909 | 472 | (5) 6414 |
| 108 | Notice of completion of assessment roll.... | 1909 | 472 | (5) 6414 |
| 110, subd. 6, added | Special tax where June election adopted.. | 1909 | 472 | (5) 6415 |
| 128 | Borrowing money generally..... | 1911 | 57 | (8) 857 |
| 128 | Borrowing money generally..... | 1911 | 738 | (8) 857 |
| 128, subd. 13, added | Borrowing money for highways..... | 1910 | 4 | (7) 1219 |
| 131 | Second election to raise money..... | 1910 | 598 | (7) 1219 |
| 145 | Petition for street improvement..... | 1911 | 310 | (8) 858 |
| 145a, added | Street improvements in villages of second class | 1911 | 403 | (8) 859 |
| 146, subd. 5, added | Notice to railroad company of laying out street | 1912 | 224 | (9) 540 |
| 162 | Credit for flagging sidewalks..... | 1911 | 515 | (8) 859 |
| 165 | Sprinkling streets | 1912 | 125 | (9) 541 |
| 166 | Construction of sidewalks..... | 1909 | 430 | (5) 6442 |
| 169 | Acquisition of land for parks, etc..... | 1909 | 469 | (5) 6445 |
| 186 | Civil jurisdiction of police justices..... | 1911 | 501 | (8) 860 |
| 244 | Supervision and extension of lighting sys- tem | 1912 | 364 | (9) 541 |
| 276 | Sewers | 1909 | 212 | (5) 6472 |
| 276 | Sewers | 1912 | 122 | (9) 542 |
| 278, added | Powers of sewer commissioners..... | 1910 | 259 | (7) 1220 |
| 278-283, added | Board of public works..... | 1910 | 626 | (7) 1221 |
| 290 | Acquisition of lands for parks or cemeteries | 1909 | 469 | (5) 6473 |
| 292 | Ordinances of park or cemetery commis- sioners | 1909 | 469 | (5) 6474 |
| 295 | Property in trust for park or cemetery.... | 1909 | 469 | (5) 6475 |

TABLE OF LAWS AMENDED OR REPEALED.

601

| Section. | SUBJECT. | Year. | Chap- ter. | Page. |
|---------------------------------|---|-------|---------------|----------|
| VILLAGE LAW—(Continued). | | | | |
| 296 | Reports of park and cemetery commission- ers | 1909 | 469 | (5) 6476 |
| 297, added | Control and maintenance of parks..... | 1909 | 469 | (5) 6476 |
| 348a, added | Annexation of territory belonging to village | 1912 | 124 | (9) 542 |
| 359, added | Establishment of uncertain boundaries.... | 1912 | 123 | (9) 542 |
| 390 | Laws repealed | 1909 | 240 | (5) 6495 |

INDEX TO LAWS.

ACKNOWLEDGMENTS

(See *Real Property Law*.)

| | SECTION | PAGE |
|---|------------------------------|------|
| deeds and other instruments, Austria-Hungary..... | <i>Real Prop. L.</i> , § 301 | 461 |

ADIRONDACK STATE PARK

(See also *Parks and Reservations, State*.)

| | | |
|--------------------------------------|-------------------------------------|-------|
| appropriations of lands for..... | <i>Conserv. L.</i> , §§ 66-87 | 67-73 |
| boundaries defined | <i>Conserv. L.</i> , § 51 | 58 |
| boundaries defined | <i>Conserv. L.</i> , § 109, subd. 3 | 86 |
| dogs prohibited in..... | <i>Conserv. L.</i> , § 193 | 103 |
| trespasses, injunctions against..... | <i>Conserv. L.</i> , § 64 | 66 |

ADMINISTRATORS

(See *Executors and Administrators*.)

ADVERTISEMENTS

| | | |
|---|------------------------|-----|
| untrue and misleading, misdemeanor..... | <i>Pen. L.</i> , § 421 | 385 |
|---|------------------------|-----|

AGRICULTURAL EXPERIMENT STATION

| | | |
|-------------------------------------|------------------------|----|
| analysis of agricultural seeds..... | <i>Agr. L.</i> , § 341 | 15 |
|-------------------------------------|------------------------|----|

AGRICULTURAL FAIR ASSOCIATIONS

| | | |
|---|------------------------|----|
| apportionment of moneys; effect of lands taken for barge canal. | <i>Agr. L.</i> , § 310 | 12 |
|---|------------------------|----|

AGRICULTURAL LAW

DAIRY PRODUCTS

| | | |
|--|----|---|
| butter, imitation, sale of oleomargarine..... | 38 | 9 |
| coloring matter | 41 | 9 |
| milk, adulterated; delivery for sale in another state..... | 32 | 9 |
| condensed, sale in foreign state..... | 37 | 9 |

DEFINITIONS

| | | |
|--|-----|----|
| cider vinegar; adulterated vinegar..... | 70 | 10 |
| feeding stuffs, concentrated commercial..... | 160 | 11 |

DOGS

| | | |
|---|----|----|
| suppression of rabies; notice of quarantine..... | 91 | 10 |
| regulations for enforcement, fines and penalties..... | 97 | 10 |
| weapons, department employees may carry..... | 96 | 10 |

FAIR ASSOCIATIONS

| | | |
|----------------------------------|-----|----|
| apportionment of racing tax..... | 310 | 12 |
| lands taken for barge canal..... | 310 | 13 |

FEEDING STUFFS

| | | |
|--|-----|----|
| concentrated commercial, term defined..... | 160 | 11 |
| mixed feed, term defined..... | 160 | 11 |

FOODS

| | | |
|--|-----|----|
| adulterated or misbranded, prohibitions as to..... | 200 | 11 |
| definitions; what constitutes..... | 201 | 11 |

PENALTIES

| | | |
|----------------------------------|----|----|
| cumulative recovery allowed..... | 52 | 10 |
|----------------------------------|----|----|

SEEDS, INSPECTION AND SALE

| | | |
|--------------------------------------|-----|----|
| agricultural seeds defined..... | 340 | 15 |
| sale regulated | 340 | 15 |
| samples, publication of results..... | 341 | 15 |

VEAL

| | | |
|-------------------------------------|-----|----|
| seizure of, execution of right..... | 106 | 10 |
|-------------------------------------|-----|----|

VINEGAR

| | | |
|---|----|----|
| definition of adulterated, and cider vinegar..... | 70 | 10 |
|---|----|----|

AGRICULTURE

| | | |
|---|-----------------------------------|-----|
| boards of supervisors may provide for improvement.. | <i>County L.</i> , § 12, subd. 28 | 148 |
| farm names, recording | <i>L.</i> 1912, ch. 145 | 190 |
| Long Island school of, establishment..... | <i>Eduo. L.</i> , §§ 1185-1188 | 179 |
| Morrisville school of, acquisition of lands..... | <i>Eduo. L.</i> , § 1094 | 177 |

| | SECTION | PAGE |
|--|----------------------------------|------|
| ALBANY COUNTY | | |
| commissioner of charities, duties as to indigent insane..... | <i>Insanity L.</i> , §§ 87, 88 | 249 |
| county judge and surrogate, salaries..... | <i>County L.</i> , § 232 | 157 |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates..... | <i>Tax L.</i> , § 234 | 505 |
| ALTONA, TOWN OF | | |
| assessment of state lands..... | <i>Tax L.</i> , § 22 | 495 |
| ANGORA GOATS | | |
| liability of owners of dogs for injuries..... | <i>County L.</i> , § 117 | 154 |
| ANTELOPE | | |
| wild, no open season, importation for breeding..... | <i>Conserv. L.</i> , § 194 | 103 |
| APPEALS | | |
| appellate division, judgment or order..... | <i>Code Civ. Pro.</i> , § 1317 | 15 |
| court of appeals, reversal presumed on question of fact..... | <i>Code Civ. Pro.</i> , § 1338 | 16 |
| murder cases, compensation of counsel..... | <i>Code Civ. Pro.</i> , § 308-a | 16 |
| district attorney to report cause of delay..... | <i>Code Crim. Pro.</i> , § 536-a | 16 |
| APPELLATE DIVISION | | |
| (See <i>Judiciary Law</i> ; <i>Supreme Court</i> .) | | |
| APPLES | | |
| containers. (See <i>General Business Law</i> .) | | |
| ARMORIES | | |
| (See <i>Military Law</i> .) | | |
| ARSON | | |
| second degree; evidence of insurance..... | <i>Pen. L.</i> , § 222 | 384 |
| ASSESSMENT | | |
| (See <i>Tax Law</i> .) | | |
| ASSIGNMENT FOR CREDITORS | | |
| (See <i>Debtor and Creditor Law</i> .) | | |
| ATTACHMENT | | |
| discharge upon application of partner..... | <i>Code Civ. Pro.</i> , § 693 | 17 |
| undertaking of partner..... | <i>Code Civ. Pro.</i> , § 694 | 17 |
| judgment in principal action; satisfaction..... | <i>Code Civ. Pro.</i> , § 708 | 17 |
| ATTORNEYS | | |
| admission to practice; removal or suspension..... | <i>Judic. L.</i> , § 88 | 309 |
| contracts for compensation for services..... | <i>Judic. L.</i> , § 474 | 314 |
| liens, determination of existence and amount..... | <i>Judic. L.</i> , § 475 | 317 |
| practice without being admitted..... | <i>Pen. L.</i> , § 270 | 384 |
| corporations not to engage in..... | <i>Pen. L.</i> , § 280 | 384 |
| misconduct; deceiving court..... | <i>Pen. L.</i> , § 273 | 384 |
| AUTOMATIC FIRE SPRINKLERS | | |
| in certain factories..... | <i>Labor L.</i> , § 83-b | 328 |
| AUTOMOBILES | | |
| (See <i>Motor Vehicles</i> .) | | |
| BAIL | | |
| admission to, before conviction..... | <i>Code Crim. Pro.</i> , § 554 | 18 |
| deposit of money in lieu of bail..... | <i>Code Crim. Pro.</i> , § 556 | 21 |
| fidelity or surety company may furnish..... | <i>Code Crim. Pro.</i> , § 577-a | 21 |
| police officer may take, for misdemeanor..... | <i>Code Crim. Pro.</i> , § 554 | 19 |
| deposit of security or personal undertaking.... | <i>Code Crim. Pro.</i> , § 554 | 19 |
| railroad employees, how taken..... | <i>Code Crim. Pro.</i> , § 554-a | 21 |
| BALLOTS | | |
| (See <i>Election Law</i> .) | | |
| BANKING LAW | | |
| BANKING DEPARTMENT | | |
| deputies, clerks and examiners, retirement..... | 5-a | 23 |
| examinations of banking institutions and agencies by super- intendent | 8 | 23 |
| BANKING PROVISIONS GENERALLY | | |
| liability of directors for acts of executive committee..... | 42 | 25 |
| loans on stock of bank..... | 27 | 25 |
| BANKS | | |
| examinations by superintendent..... | 8 | 23 |
| procedure upon conduct..... | 8 | 23 |
| impairment of capital..... | 17 | 24 |

| | | |
|--|-------------------------------|---------|
| BANKING LAW—(Continued). | | |
| BANKS—(Continued). | | |
| powers enumerated | SECTION 66 | PAGE 26 |
| stockholders, receiver to enforce liability..... | 71 | 27 |
| CO-OPERATIVE SAVINGS ASSOCIATIONS | | |
| capital and shares..... | 215 | 32 |
| fines, imposition and collection..... | 211 | 32 |
| loans upon real estate mortgages..... | 219 | 32 |
| second or divided mortgages..... | 219 | 33 |
| unimproved or vacant land..... | 219 | 33 |
| DELINQUENT CORPORATIONS | | |
| proceedings against, by superintendent..... | 19 | 24 |
| INDIVIDUAL BANKER | | |
| examinations of, how conducted..... | 8 | 23 |
| delinquent, proceedings against..... | 19 | 24 |
| SAVINGS BANKS | | |
| deposits; minors; trust funds..... | 144 | 28 |
| investment; municipal bonds..... | 146 | 29 |
| trustees, number and qualifications..... | 137 | 27 |
| majority not to be directors in bank or trust company.. | 137 | 28 |
| reduction of number..... | 137 | 28 |
| vacancy created if judgment unsatisfied..... | 137 | 28 |
| TRUST COMPANY | | |
| examinations of, how conducted..... | 8 | 23 |
| lawful money reserve..... | 198 | 29-31 |
| powers restricted | 186 | 29 |
| BANKS | | |
| false statements or rumors..... | <i>Pen. L., § 303</i> | 385 |
| falsification of books, reports, etc..... | <i>Pen. L., § 304</i> | 385 |
| (See <i>Banking Law</i> .) | | |
| BARGE CANALS | | |
| (See <i>Canals</i> , pp. 41-44.) | | |
| BARREL | | |
| size regulated | <i>Gen. Bus. L., § 16-a</i> | 194 |
| BATH | | |
| Soldiers' home, admission..... | <i>Pub. Bldgs. L., § 64</i> | 410 |
| BELLEVUE AND ALLIED HOSPITALS | | |
| in New York city, duties as to indigent insane..... | <i>Insanity L., §§ 87, 88</i> | 249 |
| BENEVOLENT ORDERS LAW | | |
| Knights of the Maccabees of the World, organization and powers | | |
| of tents | 2 | 35 |
| Loyal Order of Moose, lodges, election of trustees..... | 2 | 35 |
| trustees, election | 2 | 35 |
| powers; bonds and investments..... | 3 | 35 |
| in respect to property..... | 5 | 37 |
| terms of office..... | 4 | 36 |
| BERTILLON SYSTEM | | |
| measurement of prisoners..... | <i>Prison L., § 21</i> | 406 |
| BINGHAMTON STATE HOSPITAL | | |
| continued | <i>Insanity L., § 40</i> | 236 |
| (See <i>Insanity Law</i> .) | | |
| BIRDS | | |
| (See <i>Conservation Law</i> .) | | |
| BLIND CHILDREN | | |
| transfer from certain institutions to state school..... | <i>Educ. L., § 972</i> | 174 |
| BOARD OF CLAIMS | | |
| jurisdiction; time of filing claims..... | <i>Code Civ. Pro., § 264</i> | 38 |
| BOARDS OF EDUCATION | | |
| (See <i>Education Law</i> .) | | |
| BOARDS OF ELECTION | | |
| (See <i>Election Law</i> .) | | |
| BOARDS OF SUPERVISORS | | |
| acquisition of sites for armories..... | <i>Mil. L., § 185</i> | 366 |
| cemeteries, consent to acquisition of lands..... | <i>Real Prop. L., § 451</i> | 463 |

| BOARDS OF SUPERVISORS—(Continued). | | SECTION | PAGE |
|--|--|----------------|-------------|
| equalization of taxes, acts legalized | L. 1912, ch. 20 | | 485 |
| (See <i>County Law</i> ; <i>General Municipal Law</i> ; <i>Highway Law</i> .) | | | |
| BOUNDARIES | | | |
| villages. | (See <i>Village Law</i> .) | | |
| BRANT | | | |
| open season, manner of taking | Conserv. L., § 211 | | 105 |
| BRIDGES | | | |
| (See <i>Highway Law</i> ; <i>Highways</i> .) | | | |
| BRONX COUNTY | | | |
| erected; officers specified | L. 1912, ch. § 548 | | 142 |
| BUFFALO STATE HOSPITAL | | | |
| continued | Insanity L., § 40 | | 236 |
| BUSINESS CORPORATIONS LAW | | | |
| incorporation; purposes | 2 | | 40 |
| BUTTER | | | |
| (See <i>Agricultural Law</i> , subheading <i>Dairy Products</i> .) | | | |
| CALENDAR | | | |
| court, entry of causes | Code Civ. Pro., § 977 | | 380 |
| CANAL IMPROVEMENTS | | | |
| (See <i>Canals</i> .) | | | |
| CANAL LAW | | | |
| claims for damages | 47 | | 45 |
| CANALS | | | |
| BARGE CANAL | | | |
| acquisition of lands | L. 1903, ch. 147, § 4 | | 43 |
| necessity of, determination as to | L. 1903, ch. 147, § 6 | | 44 |
| bridges, railroad, interference with | L. 1903, ch. 147, § 3 | | 43 |
| commission to inquire as to method of operation | L. 1912, ch. 9, § 1 | | 41 |
| investigation and report | L. 1912, ch. 9, § 1 | | 42 |
| serve without compensation | L. 1912, ch. 9, § 2 | | 42 |
| BONDS | | | |
| issue and sale, for barge canal | L. 1910, ch. 66, § 2, am'd by L. 1912, ch. 186 | | 40 |
| LOCKTENDERS | | | |
| wages may be increased | L. 1912, ch. 506 | | 45 |
| OSWEGO CANAL | | | |
| closed temporarily for construction | L. 1912, ch. 282 | | 43 |
| CARIBOU | | | |
| wild, no open season, importation for breeding | Conserv. L., § 194 | | 103 |
| CARP | | | |
| waters of state, not to be put into | Conserv. L., § 250 | | 113 |
| CASUALTY INSURANCE CORPORATIONS | | | |
| (See <i>Insurance L</i>) | | | |
| CATSKILL STATE PARK | | | |
| (See also <i>Parks and Reservations, State</i> .) | | | |
| boundaries defined | Conserv. L., § 52 | | 60 |
| boundaries defined | Conserv. L., 109, subd. 3 | | 86 |
| condemnation of lands for | Conserv. L., §§ 66-87 | | 67-73 |
| trespasses, injunctions against | Conserv. L., § 64, subd. 3 | | 66 |
| CEMETERIES | | | |
| abandonment; inscriptions recorded | Mem. Corp. L., § 85 | | 359 |
| perpetual care of lots | Mem. Corp. L., § 85 | | 360 |
| (See <i>Membership Corporation Law</i> .) | | | |
| lands in certain counties, acquisition by consent of board of supervisors or board of aldermen | Real Prop. L., § 451 | | 463 |
| CEMETERY CORPORATIONS | | | |
| abandonment of cemetery, inscriptions recorded | Mem. Corp. L., § 85 | | 350 |
| directors, election | Mem. Corp. L., § 64 | | 356 |
| changing number | Mem. Corp. L., § 64 | | 357 |
| special meetings for election | Mem. Corp. L., § 64 | | 357 |
| perpetual care of lots | Mem. Corp. L., § 85 | | 360 |
| taxation of lot owners | Mem. Corp. L., § 72 | | 358 |

INDEX TO LAWS.

607

| | | |
|---|--|-------------|
| CENTRAL ISLIP STATE HOSPITAL | SECTION | PAGE |
| continued (See <i>Insanity Law</i>) | <i>Insanity L.</i> , § 40 | 236 |
| CERTIORARI, WRIT OF | | |
| review of assessment | <i>Tax L.</i> , § 200 | 512 |
| CHARITABLE INSTITUTIONS, STATE | | |
| cost of maintenance of inmates, payment by county | <i>County L.</i> , § 12, <i>subd.</i> 29 | 150 |
| CHattel MORTGAGES | | |
| notice to assignee of prior mortgage | <i>Lien L.</i> , § 230 | 348 |
| renewal; statement filed | <i>Lien L.</i> , § 235 | 349 |
| where filed | <i>Lien L.</i> , § 232 | 349 |
| CHAUFFEURS | | |
| (See <i>Highway Law</i>) | | |
| CHAUTAUQUA COUNTY | | |
| surrogate, payment of expenses | <i>County L.</i> , § 232 | 158 |
| CHILDREN | | |
| employment in factories (See <i>Labor Law</i>) | <i>Labor L.</i> , §§ 71, 77 | 323 |
| incorrigible, transfer from institutions | <i>Pen. L.</i> , § 486 | 387 |
| CHIROPODY | | |
| practice regulated | <i>Pub. Health L.</i> , §§ 272-281 | 414 |
| CHURCHES | | |
| (See <i>Religious Corporations Law</i>) | | |
| CITIES | | |
| second class. (See <i>Second Class Cities Law</i>) | | 466, 467 |
| second and third classes, connecting state and county highways | <i>High. L.</i> , § 138 | 217 |
| apportionment of cost of construction | <i>High. L.</i> , § 143 | 220 |
| CITY CLERK | | |
| marriage license, issuance | <i>Dom. Rel. L.</i> , § 14 | 164 |
| duty in respect to | <i>Dom. Rel. L.</i> , § 15 | 166 |
| records of statements, etc., to be kept | <i>Dom. Rel. L.</i> , § 19 | 168 |
| CITY COURT OF NEW YORK | | |
| attendants, justices to appoint | <i>Code Civ. Pro.</i> , § 335 | 46 |
| clerks, deputy clerk, assistants, stenographers, and typewriter operators | <i>Code Civ. Pro.</i> , § 328 | 45 |
| destruction of useless records | <i>Code Civ. Pro.</i> , § 339-a | 46 |
| CIVIL RIGHTS LAW | | |
| right of privacy, intent of statute | 50 | 47 |
| action for damages; damages | 51 | 47 |
| CIVIL SERVICE | | |
| soldiers, sailors or marines, leave of absence, Gettysburg anniversary | <i>L. 1912, ch. 144</i> | 47 |
| CIVIL SERVICE LAW | | |
| CLASSIFIED SERVICE | | |
| determination of commission, review by courts | 10 | 48 |
| teaching staffs in state agricultural schools | 9 | 48 |
| COMPETITIVE CLASS | | |
| positions included | 14 | 48 |
| promotion, transfer, etc. | 16 | 49 |
| recommendation for appointment or promotion | 25 | 50 |
| removal, power limited | 22 | 49 |
| taxpayer's action not proper remedy | 28 | 50 |
| EXEMPT CLASS | | |
| secretary of officer, board or commission | 13 | 48 |
| CODE CIVIL PROCEDURE | | |
| appeals to appellate division, judgment or order | 1317 | 15 |
| court of appeals, presumption of reversal | 1338 | 16 |
| attachment, discharge or application of partner | 693 | 17 |
| undertaking to be given | 694 | 17 |
| satisfaction of judgment in action | 708 | 17 |
| authentication of foreign documents | 956 | 188 |
| board of claims; jurisdiction; time of filing claims | 264 | 38 |
| calendars, entry of causes after filing note of issue | 977 | 380 |
| city court of New York, clerk, deputy, etc. | 328 | 45 |

CODE CIVIL PROCEDURE—(Continued).

city court of New York—(Continued).

| | SECTION | PAGE |
|---|---------|------|
| attendants, justices to appoint | 335 | 46 |
| destruction of useless records..... | 339-a | 46 |
| executors and administrators, judicial settlement of accounts... | 2728 | 190 |
| sale of personal property to pay debts | 2717 | 190 |
| incompetent persons, committee of property | 2323-a | 354 |
| judgments, docket books | 1245 | 305 |
| current docket books in New York county | 1245-a | 306 |
| mortgage, foreclosure, where people is party | 1627 | 374 |
| sale under, affidavits | 2396 | 374 |
| orders, definition and forms | 767 | 375 |
| revision, board of statutory consolidation to report as to ..L. 1912, ch. 393 | | 51 |

CODE CRIMINAL PROCEDURE

| | | |
|--|-------|-----|
| accommodations for courts | 55 | 159 |
| appeals in murder cases, compensation of counsel | 308-a | 16 |
| district attorney to report cause of delay | 536-a | 16 |
| bail, police officer may take | 554 | 18 |
| deposit of money in lieu of | 586 | 21 |
| fidelity or surety company may furnish | 577-a | 21 |
| railroad employee, how given | 554-a | 21 |
| copy of minutes of official stenographer | 221-b | 189 |

COLD STORAGE

| | | |
|--|--------------------|-----|
| fish, storage by dealers during close season | Conserv. L., § 375 | 137 |
|--|--------------------|-----|

COMMERCIAL FEEDING STUFFS(See *Agricultural Law*.)**COMMISSIONER OF EDUCATION**(See *Education Law*.)

| | | |
|---|-----------------------|-----|
| apportionment of public school moneys | Educ. L., §§ 494, 496 | 173 |
| blind pupils, duties as to | Educ. L., §§ 972, 973 | 174 |

COMPRESSED AIR

| | | |
|---------------------------------------|--------------------------|-----|
| use of, in tunnels and caissons | Labor L., §§ 134-a 134-d | 330 |
|---------------------------------------|--------------------------|-----|

(See *Labor Law; Tunnels*.)**CONCENTRATED COMMERCIAL FEEDING STUFFS**

| | | |
|--------------------|----------------|----|
| term defined | Agr. L., § 160 | 11 |
|--------------------|----------------|----|

CONNECTICUT

| | | |
|---------------------|---------------|-----|
| boundary line | State L., § 2 | 472 |
|---------------------|---------------|-----|

CONSERVATION COMMISSION

| | | |
|---|--------------------|-----|
| annual reports, contents | Conserv. L., § 12 | 54 |
| contents, inquiries, inclusion of results | Conserv. L., § 12 | 54 |
| beaver, acquisition for state parks | Conserv. L., § 157 | 91 |
| dams, fishway requirements | Conserv. L., § 292 | 118 |
| deer, acquisition for state parks | Conserv. L., § 157 | 91 |
| elk, acquisition for state parks | Conserv. L., § 157 | 91 |
| fires, auditor of accounts, appointment and salary | Conserv. L., § 95 | 78 |
| inspectors for railroads, appointment, duties and salaries | Conserv. L., § 104 | 84 |
| protective system, powers and duties | Conserv. L., § 103 | 83 |
| fish and game, close seasons, local establishment | Conserv. L., § 153 | 90 |
| collection and possession for propagation, etc..... | Conserv. L., § 159 | 91 |
| general powers and duties relative to | Conserv. L., § 150 | 88 |
| law compilation and syllabus, annual publication and distribution | Conserv. L., § 160 | 92 |
| orders and rules, penalty for violation | Conserv. L., § 161 | 92 |
| protection, additional, petition and administrative procedure | Conserv. L., § 152 | 89 |
| signboards against hunting and fishing, supply to private owners | Conserv. L., § 363 | 132 |
| unlawfully possessed, seizure and sale | Conserv. L., § 155 | 90 |
| fish, culture and propagation | Conserv. L., § 151 | 88 |
| culturist, appointment | Conserv. L., § 151 | 88 |
| functions, salary and expenses | Conserv. L., § 151 | 88 |
| eggs, purchase | Conserv. L., § 156 | 91 |
| hatcheries, pollution of waters, abatement of nuisances | Conserv. L., § 248 | 112 |
| passages, removal of obstructions from streams | Conserv. L., § 246 | 112 |
| under size limit, imported or taken, disposition | Conserv. L., § 177 | 96 |

| CONSERVATION COMMISSION—(Continued). | | SECTION | PAGE |
|--|---------------------|----------------|-------------|
| fishing, inland fisheries superintendent. designation | <i>Conserv. L.,</i> | § 271 | 115 |
| nets and netting, prescription of rules for use | <i>Conserv. L.,</i> | 270 | 115 |
| nets seized, sale at auction | <i>Conserv. L.,</i> | 282 | 117 |
| vessels to carry commission's employees | <i>Conserv. L.,</i> | 281 | 117 |
| fishways, fishing near forbidden, placing of signs | <i>Conserv. L.,</i> | 251 | 113 |
| forestry, pathologist, appointment and duties | <i>Conserv. L.,</i> | § 61 | 64 |
| superintendent, assistant superintendent and foresters, powers and duties | <i>Conserv. L.,</i> | § 60 | 64 |
| game, destructive of property, temporary permits to take | <i>Conserv. L.,</i> | 158 | 91 |
| protectors, appointment and designation | <i>Conserv. L.,</i> | 165 | 92 |
| rating and removal | <i>Conserv. L.,</i> | 166 | 93 |
| special, appointment | <i>Conserv. L.,</i> | 171 | 94 |
| land, appraisers, appointment and compensation | <i>Conserv. L.,</i> | 79 | 71 |
| acquired for sale, filing of papers | <i>Conserv. L.,</i> | 66 | 67 |
| actions or proceedings that commission may bring | <i>Conserv. L.,</i> | 64 | 65 |
| general powers and duties | <i>Conserv. L.,</i> | 55 | 61 |
| rules and regulations relative to, posting, violation | <i>Conserv. L.,</i> | 33 | 56 |
| legal department, salaries and duties | <i>Conserv. L.,</i> | § 9 | 53 |
| moose, acquisition for state parks | <i>Conserv. L.,</i> | § 157 | 91 |
| orders and rules, penalties for violation | <i>Conserv. L.,</i> | § 161 | 92 |
| Palisades interstate park, powers relative to | <i>Conserv. L.,</i> | 55 | 62 |
| parks and reservations, state, inspection | <i>Conserv. L.,</i> | 56 | 62 |
| posted laws, rules or notices, interference with, penalty | <i>Conserv. L.,</i> | 90 | 81 |
| secretary, salary | <i>Conserv. L.,</i> | § 3 | 53 |
| shellfish industry, levy and collection of taxes | <i>Conserv. L.,</i> | § 308 | 123 |
| state institution lands, examinations and recommendations | <i>Conserv. L.,</i> | § 59 | 63 |
| CONSERVATION LAW | | | |
| Adirondack park, boundaries defined | | 51 | 58 |
| term includes certain land | | 109 | 86 |
| dogs prohibited in | | 193 | 103 |
| land condemnations | | 66-87 | 67-73 |
| trespasses, injunctions against | | 64 | 66 |
| antelope, wild, no open season, importation for breeding | | 194 | 103 |
| ashes, marine dumping limits | | 326 | 129 |
| bass, defined | 380, subd. 15 | | 139 |
| open season, limit | | 231 | 109 |
| spawning not to be disturbed | | 243 | 111 |
| striped, size, sale | | 240 | 111 |
| beaver, acquisition for state parks | | 157 | 91 |
| molestation only when destructive of property | | 197 | 104 |
| birds, dead bodies, sale | | 180 | 97 |
| plumage, defined | 380, subd. 22 | | 139 |
| provisions governing | 210-223 | | 105-108 |
| sale, without license | 372, subd. 5 | | 136 |
| wild, protection | 219-221 | | 107-108 |
| black-game, dead, importation, consumption in hotels, etc. | | 374 | 137 |
| breeding of fish and game, provisions governing | 370-376 | | 133-138 |
| caribou, wild, no open season, importation for breeding | | 194 | 103 |
| carp, waters of state, not to be put into | | 250 | 113 |
| Catskill park, boundaries defined | | 52 | 60 |
| Catskill park, boundaries defined | 109, subd. 3 | | 86 |
| land condemnations | 66-87 | | 67-72 |
| trespasses, injunctions against | 64, subd. 3 | | 66 |
| claims board, examinations of real property appropriated by commission | | 73 | 69 |
| close season, defined | 380, subd. 5 | | 138 |
| local, establishment | | 153 | 90 |
| special, proclamation in time of drought | | 107 | 85 |
| conservation commission, actions or proceedings to protect state's real property | | 64 | 65 |
| annual reports, contents | | 12 | 54 |
| contents, inquiries, inclusion of results | | 57 | 63 |
| general powers and duties | | 150 | 88 |
| legal department, salaries and duties | | 9 | 53 |
| secretary's salary | | 3 | 53 |
| constables to have powers of game protectors | | 172 | 95 |
| convict labor, use for tree nurseries and planting | | 62 | 64 |
| SUP. III—39 | | | |

CONSERVATION LAW—(Continued).

| | SECTION | PAGE |
|--|--------------------|----------|
| deer, acquisition for state parks | 157 | 91 |
| breeding and sale, provisions governing | 372, 374 | 134 |
| carcasses, importation, consumption in hotels, etc. | 373, 374 | 134 |
| nonresident license coupons..... | 185, subd. 14 | 100 |
| wild, defined | 380, subd. 11 | 139 |
| hunting regulations | 190-193 | 102-103 |
| district attorneys, licenses for hunting and trapping, enforcement of provisions | 185, subd. 10, 187 | 100, 101 |
| dogs, deer parks of state, prohibited in | 193 | 103 |
| hunting with aid of | 177 | 96 |
| ducks, mallard and black, breeding and sale, provisions governing | 372, 374 | 134 |
| open season, limit, manner of taking | 211, 212 | 105, 106 |
| eel, taking in marine waters | 330, 331 | 130 |
| use of weirs and pots | 256 | 113 |
| elk, acquisition for state parks | 157 | 91 |
| breeding and sale, provisions governing | 194 | 103 |
| wild, no open season, importation for breeding | 194 | 103 |
| evergreen trees, cutting in certain towns | 89 | 73 |
| explosives, use and possession upon waters forbidden | 245 | 112 |
| farm owners, right to hunt and trap without licenses | 185, subd. 8 | 99 |
| fires, apparatus and implements for fighting | 91, subd. 4 | 76 |
| auditor of fire accounts, advances for fire fighting | 96 | 78 |
| appointment and salary | 95 | 78 |
| camps, fire regulations | 100 | 81 |
| civil service law, exemption of fire fighting force | 92, subd. 4 | 77 |
| commission's powers and duties | 91 | 76 |
| district forest rangers, appointment, salaries, duties..... | 91, subd. 3 | 76 |
| districts, establishment | 91, subd. 2 | 76 |
| subdivision | 92, subd. 1 | 76 |
| engines other than railroad, preventive devices..... | 106 | 85 |
| fighting, employment of help..... | 92, subd. 2 | 77 |
| expenses, how paid..... | 94 | 77 |
| fire companies, organization..... | 91, subd. 4 | 76 |
| fire wardens, public, defined..... | 92, subd. 2 | 76 |
| special, defined and given powers..... | 93 | 77 |
| trespasses upon state lands, reports and arrests..... | 63, subd. 1 | 65 |
| forest rangers, district, appointment, salaries, duties..... | 91, subd. 3 | 76 |
| duties, salaries, supplies..... | 92, subd. 2 | 77 |
| land clearing fires, supervision..... | 97 | 79 |
| reports | 92, subd. 4 | 77 |
| governor may proclaim special close seasons in times of drought | 107 | 85 |
| gunwads to be incombustible..... | 99 | 80 |
| land clearing in certain towns, regulations..... | 97 | 79 |
| observation stations, establishment..... | 91, subd. 4 | 76 |
| railroads, employees to report fires..... | 103, subd. 4 | 83 |
| evidence of negligence..... | 98, subd. 3 | 80 |
| fire inspectors, commission may appoint, duties and salaries | 104, 105 | 84 |
| fire patrols | 101, 102 | 81, 82 |
| locomotives, preventive devices..... | 103, 105 | 83, 84 |
| rights of way, clearing..... | 103 | 83 |
| tracks, coals or ashes not to be deposited on..... | 103, subd. 4 | 83 |
| setting or neglecting, damages and penalties..... | 98, 99 | 80 |
| signals and signal code, adoption..... | 91, subd. 4 | 76 |
| statistics, commission's reports to contain..... | 12 | 54 |
| telephone and other communication, maintenance..... | 91, subd. 4 | 76 |
| torches, etc., not to be carried in or near woodlands..... | 99 | 80 |
| trails, ditches and barriers..... | 91, subd. 5 | 76 |
| fish and game, additional protection, petition and administrative procedure | 152 | 89 |
| collection and possession for propagation, etc. | 159 | 91 |
| construction of article five | 382 | 140 |
| limit clause, general | 176 | 95 |
| ownership vested in state | 175 | 95 |
| possession as evidence of unlawful taking..... | 181 | 97 |
| transportation, carriers not to transport as owners..... | 178, subd. 1 | 96 |
| game bred in preserves..... | 372, subds. 3, 4 | 135 |

INDEX TO LAWS.

611

CONSERVATION LAW—(Continued).

fish and game—(Continued).

| | SECTION | PAGE |
|--|------------------|------|
| transportation—(Continued). | | |
| imported game carcasses..... | 373 | 136 |
| into state..... | 178, subd. 4 | 97 |
| out of state..... | 178, subd. 3 | 97 |
| propagation purposes..... | 179 | 97 |
| skins, plumage, etc..... | 179 | 97 |
| within state..... | 178, subd. 2 | 96 |
| unlawfully possessed, search warrants, issue..... | 34 | 56 |
| fish, ashes, garbage, etc., marine dumping limits..... | 326 | 129 |
| culture and propagation, appropriation of lands and waters | | |
| for..... | 66, subd. 2 | 67 |
| culture by commission..... | 155 | 90 |
| eggs, purchase by commission..... | 156 | 91 |
| fit for food, not to be taken for fertilizers..... | 324, subd. 3 | 129 |
| garbage, marine dumping limits..... | 326 | 129 |
| hatcheries, pollution of waters forbidden..... | 248 | 112 |
| water not to be held back from..... | 249 | 113 |
| manner of taking..... | 177, subd. 2 | 96 |
| return to water..... | 177, subd. 2 | 96 |
| storage by dealers during close season..... | 375 | 137 |
| streams, obstruction forbidden..... | 246 | 112 |
| pollution forbidden..... | 325 | 129 |
| pollution forbidden..... | 247 | 112 |
| terms defined..... | 380, subd. 6 | 138 |
| transportation into state..... | 370 | 133 |
| under size limit, imported or taken, disposition..... | 177, subd. 2 | 96 |
| fishing, inland fisheries superintendent, duties, salary and expenses | 271 | 115 |
| nets and netting, terms defined..... | 380, subd. 25 | 140 |
| use..... | 270-284 | 115 |
| set and trap lines, use..... | 254 | 113 |
| spears and hooks, use..... | 255 | 113 |
| through ice, tip-ups..... | 252, 253 | 113 |
| thumping forbidden..... | 244 | 111 |
| vessels, licenses..... | 324 | 128 |
| vessels to carry conservation commission's employees..... | 281 | 117 |
| waters not to be drawn off..... | 249 | 113 |
| fishways, fishing near, forbidden..... | 251 | 113 |
| provisions governing..... | 290-293 | 118 |
| forest, fish and game law, general repeal..... | 384 | 140 |
| forest preserve counties, term defined..... | 109, subd. 1 | 86 |
| forest preserve, defined..... | 50 | 58 |
| dogs prohibited in..... | 193 | 103 |
| trespasses, injunctions against..... | 64, subd. 3 | 66 |
| forest rangers, district, appointment, salaries, duties..... | 91, subd. 3 | 76 |
| duties, salaries, supplies..... | 92, subd. 2 | 76 |
| land clearing fires, supervision..... | 97 | 79 |
| reports..... | 92, subd. 4 | 77 |
| trespasses upon state lands, reports and arrests..... | 63, subd. 1 | 65 |
| forestry, pamphlets and circulars, publication..... | 55, subd. 4 | 61 |
| pathologist, appointment and duties..... | 61 | 64 |
| private lands, inspection..... | 88 | 73 |
| reforestation and underplanting..... | 89 | 73 |
| forest superintendent, assistant superintendent and forester, ap- pointment, powers and duties..... | 60 | 64 |
| frogs, open season..... | 257 | 114 |
| fuel, grants of timber for..... | 76, subd. 1 | 69 |
| fur bearing animals, open season, manner of taking..... | 197-201 | 104 |
| game, carcasses from foreign countries, importation, consumption | | |
| in hotels, etc..... | 373, 374 | 137 |
| destructive of property, temporary permits to take..... | 158 | 91 |
| game birds, defined..... | 210 | 105 |
| shore, open season, limit..... | 216, 217 | 107 |
| upland, open season, limit..... | 214, 215 | 106 |
| water fowl, open season, limit, manner of taking..... | 211, 212 | 105 |
| gunwads to be incombustible..... | 99 | 80 |
| manner and hours of taking..... | 177, subd. 1 | 96 |
| parks, private, provisions governing..... | 360-366 | 131 |
| inclosed lands, defined..... | 380, subd. 23 | 139 |
| terms defined..... | 380, subds. 7-10 | 139 |

CONSERVATION LAW—(Continued).

| | SECTION | PAGE |
|--|------------------|------|
| game protectors, bonds and sureties..... | 167 | 93 |
| forest fire fighting, powers and duties..... | 92, subd. 2 | 78 |
| nets, seizure, destruction or sale..... | 282, 283 | 117 |
| number and designation..... | 165 | 92 |
| powers and duties..... | 169 | 94 |
| rating and removal..... | 166 | 92 |
| records and reports..... | 170 | 94 |
| salaries and expenses..... | 168 | 93 |
| special, appointment..... | 171 | 94 |
| trespasses upon state lands, reports and arrests..... | 63, subd. 1 | 65 |
| grouse, carcasses, importation, consumption in hotels, etc..... | 373, 374 | 136 |
| defined..... | 380, subd. 12 | 139 |
| guides, etc., in state parks, license..... | 55, subd. 5 | 61 |
| hares and rabbits, open season, limit, sale..... | 196 | 103 |
| highways, game not to be taken upon..... | 222 | 108 |
| icefish, open season, size, sale..... | 241 | 111 |
| John Brown Farm, description..... | 54 | 61 |
| lake trout, defined..... | 380, subd. 14 | 139 |
| nets, size of mesh..... | 272, subd. 1 | 115 |
| open season, limit..... | 234, 235 | 110 |
| spawning not to be disturbed..... | 243 | 111 |
| lands, actions or proceedings that commission may bring..... | 64 | 66 |
| appraisers of lands offered for sale to state, appointment and compensation..... | 79 | 71 |
| appropriation by commission..... | 66-67 | 67 |
| commission's general powers and duties..... | 55-59 | 61 |
| partition procedure, state part owner..... | 65 | 66 |
| purchases by state, description in annual reports..... | 12 | 54 |
| rules and regulations, posting, violation..... | 33 | 56 |
| title of state, actions to protect..... | 64, subd. (b) | 65 |
| fling of deeds, contracts, etc..... | 86 | 72 |
| measures to perfect..... | 81 | 71 |
| trespass, annual reports of cases..... | 12 | 54 |
| arrests and actions..... | 63 | 65 |
| injunctions against..... | 64, subd. 3 | 66 |
| lands purchased by state, adjustment of claims..... | 80 | 71 |
| private lands, fire fighting, action not to lie..... | 92, subd. 3 | 77 |
| term defined..... | 109, subd. 4 | 86 |
| law compilation and syllabus, annual publication and distribution..... | 160 | 92 |
| licenses, breeding of game..... | 372, subds. 1, 8 | 134 |
| eel weirs and pots..... | 256 | 113 |
| guides, etc., state parks..... | 55, subd. 5 | 61 |
| hunting and trapping..... | 185-187 | 98 |
| imported game carcasses, sale..... | 373 | 136 |
| minnows, taking for bait..... | 230 | 109 |
| nets and netting, use..... | 270 | 115 |
| non-residents, lobster fishing..... | 323 | 128 |
| sale of bred game..... | 372, subd. 5 | 136 |
| skunks, propagation..... | 200 | 104 |
| sturgeon fishing..... | 254 | 113 |
| transportation of game..... | 178 | 96 |
| vessels fishing for oil or fertilizer purposes..... | 324 | 128 |
| litigation, commission's annual reports to summarize..... | 12 | 54 |
| lobsters, fishing regulations..... | 321-325 | 127 |
| lumber, commercial statistics, annual collection..... | 198 | 104 |
| marine fisheries, provisions governing..... | 330-335 | 129 |
| maskalonge, open season, size, sale..... | 239 | 111 |
| mink, raccoon and sable, open season..... | 198 | 104 |
| minnows, right to take..... | 230 | 109 |
| minors under 16, right to hunt and trap without licenses..... | 185, subd. 8 | 90 |
| moose, acquisition for state parks..... | 157 | 91 |
| wild, no open season, importation for breeding..... | 194 | 103 |
| muskrats, open season, protection of houses..... | 201 | 104 |
| nests of birds, destroying or robbing forbidden, exceptions..... | 220 | 108 |
| nets and netting, marine fishing regulations..... | 324, 327 | 128 |
| nonresidents, fishing vessel licenses..... | 324, subd. 2 | 128 |
| fur bearing animals, licenses to trap..... | 186 | 101 |
| lobsters, right to take..... | 323, 325 | 128 |

CONSERVATION LAW—(Continued).

| | SECTION | PAGE |
|--|---------------|----------|
| nonresidents—(Continued). | | |
| shellfish not to be taken by..... | 310 | 124 |
| transportation of fish and game out of state..... | 178, subd. 3 | 97 |
| deer coupons | 185, subd. 14 | 100 |
| open season, defined..... | 380, subd. 4 | 138 |
| oysters, taking and sale..... | 314-317 | 126 |
| Palisades interstate park, conservation commission's powers rela- tive to | 55, subd. 11 | 62 |
| parks and reservations, state, guides, etc., license..... | 55, subd. 5 | 61 |
| inspections by commission..... | 56-59 | 62 |
| partridges, carcasses, importation, consumption in hotels, etc.... | 373, 374 | 136, 137 |
| penalties, actions for, court jurisdiction..... | 31 | 56 |
| how brought, compromise..... | 26 | 54 |
| judgments, enforcement | 28 | 55 |
| misdemeanors, punishment | 32 | 56 |
| proceeds under art. 5, disposition, moieties..... | 29 | 55 |
| under art. 4, disposition..... | 30 | 55 |
| search warrants, issue..... | 34 | 56 |
| state entitled to costs..... | 27 | 55 |
| witnesses | 35 | 56 |
| birds, provisions governing, violations..... | 223 | 108 |
| breeding provisions, violation..... | 376 | 138 |
| camp fire regulations, violation..... | 100 | 81 |
| commission's orders and rules, violation..... | 161 | 92 |
| engines other than railroad, failure to use fire preventive de- vices | 106 | 85 |
| fire fighting, refusal to assist..... | 92, subd. 2 | 76 |
| fish fit for food, taking for fertilizers..... | 324, subd. 3 | 128 |
| fishing regulations, violation..... | 258 | 114 |
| fishway provisions, violation..... | 293 | 118 |
| game protectors, corrupt practices by..... | 169 | 94 |
| governor's proclamation of close season, violation..... | 107 | 85 |
| gunwads, combustible, use..... | 99 | 80 |
| lands, clearing fire regulations, violation..... | 97 | 79 |
| commission's rules and regulations, violation..... | 33 | 56 |
| license applications, false statements..... | 185, subd. 2 | 98 |
| licenses, for hunting and trapping, alteration or transfer..... | 185, subd. 9 | 100 |
| lumber manufacturers, failures to furnish statistics..... | 108 | 86 |
| marine fishing regulations, violation..... | 335 | 131 |
| nets and netting, unlawful use..... | 284 | 117 |
| nonresidents, fishing without licenses..... | 324, subd. 2 | 128 |
| license regulations, violation..... | 187 | 101 |
| posted laws, rules or notices, interference with..... | 90 | 80 |
| private game parks, violations of provisions governing..... | 366 | 133 |
| protective regulations, additional, violations..... | 152, subd. 5 | 89 |
| public officers, license regulations, failure to enforce..... | 187 | 101 |
| quadrupeds, hunting provisions, violation..... | 203 | 104 |
| railroads, coals or ashes, deposit upon tracks..... | 103, subd. 4 | 83 |
| employees, failure to report fires..... | 103, subd. 4 | 83 |
| fire patrol regulations, violation, forest preserve coun- ties | 101, subd. 2 | 81 |
| outside forest preserve counties..... | 102, subd. 3 | 83 |
| fire patrolmen, failure or falsification in reports of fires | 101, subd. 2 | 81 |
| locomotive fire devices, failure to use..... | 103, subd. 4 | 83 |
| rights of way, failure to clear..... | 103, subd. 4 | 83 |
| refuges for game, disturbance..... | 153 | 90 |
| sale provisions, violation..... | 376 | 138 |
| saving clause | 111 | 86 |
| setting fires | 98, 99 | 80 |
| shellfish reports, failure or error..... | 307, subd. 2 | 122 |
| signboards, interference with..... | 364 | 132 |
| taking and transportation provisions, violations..... | 182 | 98 |
| torches, etc., carrying in or near woodlands..... | 99 | 80 |
| transportation provisions, violation..... | 376 | 138 |
| trespasses upon state lands..... | 63, subd. 2 | 65 |
| pheasants, breeding and sale, provisions governing..... | 372, 374 | 134 |
| carcasses, importation, consumption in hotels, etc..... | 373, 374 | 136 |

CONSERVATION LAW—(Continued).

| | SECTION | PAGE |
|--|--------------------|---------|
| pheasants—(Continued). | | |
| defined | 380, subd. 19 | 139 |
| pickerel, defined | 380, subd. 16 | 139 |
| open season, limit, sale | 237 | 110 |
| pigeons, Antwerp or homing, no interference with | 218 | 107 |
| pike, defined | 380, subd. 16 | 139 |
| open season, limit, sale | 237 | 110 |
| pikeperch, defined | 380, subd. 17 | 139 |
| open season, size, sale | 236 | 110 |
| plover, carcasses, importation, consumption in hotels, etc. | 373, 374 | 136 |
| posted laws, rules and notices, interference with, penalty | 99 | 80 |
| private game parks, provisions governing | 360-366 | 131-133 |
| inclosed lands defined | 380, subd. 23 | 139 |
| private lands, special fire wardens | 93 | 77 |
| quadrupeds, provisions governing | 190-203 | 102-104 |
| quail, carcasses, importation, consumption in hotels, etc. | 373, 374 | 136 |
| rabbits and hares, open season, limit, sale | 196 | 103 |
| rails, coots, mud hens and gallinules, open season, limit. | 213 | 106 |
| reforestation and underplanting of private lands, provisions gov- erning | 89 | 73 |
| refuges for fish and game, establishment | 163 | 90 |
| repeals schedule | 383 | 140 |
| roeback, breeding and sale, provisions governing | 372, 374 | 134 |
| carcasses, importation, consumption in hotels, etc. | 373, 374 | 136 |
| Saint Lawrence reservation, boundaries defined | 53 | 61 |
| scallops, size limit | 318 | 127 |
| searches and seizures, fish and game unlawfully possessed | 169 | 94 |
| seizures and sales of fish and game unlawfully possessed | 154 | 90 |
| shad, Richmond county fishing regulations | 329 | 129 |
| shellfish, defined | 380, subd. 18 | 139 |
| provisions governing | 300-335 | 119 |
| sheriffs to have powers of game protectors | 172 | 95 |
| shore birds, open season, limit | 216, 217 | 107 |
| shrimp, taking in marine waters | 330, 332 | 129 |
| signboards, warning against hunting and fishing | 361-366 | 132 |
| skunks, open season, manner of taking | 199 | 104 |
| propagation and sale | 200 | 104 |
| smelt, open season, size, sale | 241 | 111 |
| snares, nets and traps for birds forbidden | 221 | 108 |
| trout, defined | 380, subds. 13, 14 | 139 |
| open season, limit | 232-235 | 109 |
| private hatcheries, provisions governing | 371 | 134 |
| spawning not to be disturbed | 243 | 111 |
| stocking private waters with, regulations | 242 | 111 |
| waters inhabited by, certain fish not to be put into | 250 | 113 |
| eel weirs not to be used | 256 | 113 |
| minnows not to be taken with net, trap or seine | 230 | 109 |
| nets, use forbidden | 275 | 118 |
| no fishing through ice | 252, 253 | 113 |
| squirrels, black and gray, open season and limit | 195 | 103 |
| starfish to be destroyed | 320 | 127 |
| state institution grounds, conservation commission may examine and advise | 59 | 63 |
| statistics of lumber industries, annual collection | 108 | 86 |
| sturgeon, nets, size of mesh | 278, 279 | 116 |
| open season, size, sale | 238 | 110 |
| set and trap lines, use | 254 | 113 |
| timber, reservation by owners when commission appropriates or purchases lands | 74-80 | 69 |
| tortoises, taking, killing and sale prohibited | 202 | 104 |
| trees, evergreen, cutting in certain towns | 90 | 76 |
| nurseries, establishment and use | 62 | 64 |
| turtles, land, taking, killing and sale prohibited | 202 | 104 |
| upland game birds, open season, limit | 214, 215 | 107 |
| water fowl, open season, limit, manner of taking | 211, 212 | 105 |
| water supply lands, game not to be taken upon | 222 | 108 |
| waters, appropriation by commission | 66-67 | 67-73 |

INDEX TO LAWS.

615

| | SECTION | PAGE |
|--|------------------------------|------|
| CONSERVATION LAW—(Continued). | | |
| white fish, open season, size, sale..... | 234 | 110 |
| Otsego, fishing with nets, size of mesh..... | 272, subd. 1 | 115 |
| words and phrases, defined..... | 380 | 138 |
| definitions of certain words..... | 109 | 86 |
| CONSPIRACY | | |
| definition and punishment | Pen. L., § 580 | 387 |
| CONSTABLES | | |
| game protectors, to have powers of..... | Conserv. L., § 172 | 95 |
| hunting and trapping, license provisions, enforcement..... | Conserv. L., § 185, subd. 10 | 100 |
| CONSTITUTION | | |
| barge canal, compensation for lands taken..... | Const., Art. I, § 6 | 2 |
| state credit not given..... | Const., Art. VIII, § 9 | 6 |
| bill of rights..... | Const., Art. I, § 6 | 1 |
| compensation for property taken for public use..... | Const., Art. I, § 6 | 1 |
| civil service | Const., Art. V, § 9 | 5 |
| creation of state debts..... | Const., Art. VII, § 4 | 6 |
| disfranchisement | Const., Art. I, § 1 | 1 |
| election laws, personal registration | Const., Art. II, § 4 | 3 |
| forest preserve..... | Const., Art. VII, § 7 | 6 |
| freedom of press..... | Const., Art. I, § 8 | 3 |
| free passes to public officers..... | Const., Art. XIII, § 5 | 7 |
| highways, improvement..... | Const., Art. VII, § 12 | 6 |
| injuries causing death, damages..... | Const., Art. I, § 18 | 3 |
| judiciary; testimony in equity cases..... | Const., Art. VI, § 3 | 5 |
| district court justices..... | Const., Art. VI, § 17 | 6 |
| removal of judges of court of claims..... | Const., Art. VI, § 11 | 6 |
| legislature; apportionment of assemblymen..... | Const., Art. III, § 5 | 4 |
| assemblymen, qualifications | Const., Art. III, § 8 | 4 |
| bills, private and local..... | Const., Art. III, §§ 16, 18 | 4 |
| appropriation | Const., Art. III, § 21 | 4 |
| presented to governor..... | Const., Art. IV, § 9 | 5 |
| local officers, appointment..... | Const., Art. X, § 2 | 6 |
| vacancies, how filled..... | Const., Art. X, § 5 | 7 |
| oaths of office..... | Const., Art. XIII, § 1 | 7 |
| prison labor..... | Const., Art. III, § 29 | 5 |
| state credit or money not to be given..... | Const., Art. VIII, § 9 | 6 |
| trial by jury..... | Const., Art. I, § 2 | 1 |
| CONTAINERS | | |
| manufacture and sale regulated..... | Gen. Bus. L., § 16-a | 194 |
| CONTEMPTS | | |
| civil, proceedings for punishment..... | Judic. L., § 753 | 318 |
| CONVEYANCES | | |
| ancient, abolished | Real Prop. L., § 241 | 459 |
| construction of covenants..... | Real Prop. L., § 253 | 459 |
| husband to wife..... | Real Prop. L., § 263 | 460 |
| recording, when necessary..... | Real Prop. L., § 291 | 460 |
| written, when necessary..... | Real Prop. L., § 242 | 459 |
| CORNELL UNIVERSITY | | |
| trustees, election, how conducted..... | Educ. L., § 1031 | 175 |
| CORONERS | | |
| number in certain counties..... | County L., § 180 | 154 |
| CORPORATIONS | | |
| banking powers prohibited..... | Gen. Corp. L., § 22 | 203 |
| capital stock, shares without par value..... | Stock Corp. L., §§ 19-23 | 478 |
| directors, election, powers of supreme court..... | Gen. Corp. L., § 32 | 203 |
| directors must be stockholders..... | Stock Corp. L., § 25 | 482 |
| liability for unauthorized dividends..... | Stock Corp. L., § 28 | 482 |
| quorum and powers of majority..... | Gen. Corp. L., § 34 | 203 |
| dissolution, attorney-general to bring action..... | Gen. Corp. L., § 102 | 204 |
| foreign, certificate of authority..... | Gen. Corp. L., § 15 | 201 |
| doing business, what constitutes..... | Gen. Corp. L., § 15 | 201 |
| penalty for failure to procure certificate..... | Gen. Corp. L., § 15 | 202 |
| moneyed; misconduct of directors..... | Pen. L., § 297 | 384 |
| names, certain prohibited..... | Gen. Corp. L., § 6 | 200 |

CORPORATIONS—(Continued).

| names—(Continued). | SECTION | PAGE |
|--|-----------------------------|------|
| effect of change..... | <i>Gen. Corp. L., § 63</i> | 204 |
| stockholders' liability, actions to enforce..... | <i>Stock Corp. L., § 56</i> | 483 |

COUNTIES

| | | |
|--|----------------------------------|-----|
| Bronx county erected..... | <i>L. 1912, ch. 548</i> | 142 |
| buildings, contracts for maintenance, etc..... | <i>County L., § 12, subd. 30</i> | 151 |
| buildings, separate contracts for plumbing, heating and ventilating..... | <i>Gen. Mun. L., § 88</i> | 208 |
| cost of treatment of poor persons in hospitals..... | <i>Poor L., § 30, subd. 2</i> | 404 |
| county highways, construction. (See <i>Highways</i> .) | | |
| forest lands, acquisition and development..... | <i>Gen. Mun. L., § 72-a</i> | 206 |
| (See <i>County Law; General Municipal Law</i> .) | | |

COUNTY CLERK

| | | |
|---------------------------------|------------------------------|-----|
| Bronx county; appointments..... | <i>L. 1912, ch. 548, § 3</i> | 144 |
| salary of county judge..... | <i>L. 1912, ch. 548, § 4</i> | 144 |

COUNTY COURT

| | | |
|--------------------------------|------------------------------|-----|
| Bronx county, established..... | <i>L. 1912, ch. 548, § 3</i> | 143 |
| salary of county judge..... | <i>L. 1912, ch. 548, § 4</i> | 144 |

COUNTY JUDGE

| | | |
|-------------------------------------|------------------------------|-----|
| salary, Bronx county..... | <i>L. 1912, ch. 548, § 4</i> | 144 |
| in certain counties, increased..... | <i>County L., § 232</i> | 157 |

COUNTY LAW**BOARD OF SUPERVISORS**

| | | |
|---|---------------------|-----|
| appropriations for betterment of agricultural conditions..... | <i>12, subd. 28</i> | 149 |
| improvement of side-paths..... | <i>12, subd. 28</i> | 150 |
| audit of claims for support of county patients in state charitable institution..... | <i>12, subd. 29</i> | 150 |
| district attorney's accounts, payment in advance..... | <i>12, subd. 29</i> | 150 |
| compensation of members..... | 23 | 151 |
| contracts for telephone, lighting, heating and maintenance of county buildings..... | <i>12, subd. 30</i> | 151 |
| meetings, when held..... | 10 | 149 |
| compelling attendance of members..... | 10 | 149 |
| quorum; rules..... | 10 | 149 |
| organization; election of officers..... | 10 | 149 |

CORONERS

| | | |
|---|-----|-----|
| number of, board of supervisors to determine..... | 180 | 154 |
| surgeons, employment of..... | 194 | 155 |

COUNTY CHARGES

| | | |
|--|-----|-----|
| necessary expenses of district attorney..... | 240 | 158 |
| employment of expert witnesses..... | 240 | 158 |
| peace officers, expenses for injuries..... | 250 | 159 |

COUNTY JUDGES AND SURROGATES

| | | |
|-----------------------------------|-----|-----|
| Albany county, salaries..... | 232 | 157 |
| when to take effect..... | 232 | 158 |
| Chautauqua county, expenses..... | 232 | 158 |
| Erie county, salaries..... | 232 | 157 |
| when to take effect..... | 232 | 158 |
| Munroe county, salaries..... | 232 | 158 |
| when to take effect..... | 232 | 158 |
| Westchester county, salaries..... | 232 | 158 |
| when to take effect..... | 232 | 158 |

COUNTY TREASURER

| | | |
|------------------------------------|-----|-----|
| additional compensation..... | 140 | 154 |
| banks of deposit, designation..... | 144 | 154 |

DISTRICT ATTORNEYS

| | | |
|--------------------------------------|-----|-----|
| assistants, in certain counties..... | 203 | 155 |
| salaries..... | 203 | 155 |

DISTRICT ATTORNEY

| | | |
|--------------------------------|---------------------|-----|
| fund for payment of bills..... | <i>12, subd. 29</i> | 150 |
|--------------------------------|---------------------|-----|

DOGS

| | | |
|---------------------------------------|-----|-----|
| liability of owners for injuries..... | 117 | 154 |
| sheep and Angora goats..... | 117 | 154 |

POOR

| | | |
|--|------|-----|
| patients in tuberculosis hospital, charge against towns..... | 49-a | 153 |
|--|------|-----|

INDEX TO LAWS.

617

| COUNTY LAW—(Continued). | SECTION | PAGE |
|--|------------------------------|------|
| TUBERCULOSIS HOSPITALS | | |
| admission of patients..... | 48, subd. 5 | 153 |
| maintenance of patients, recovery of cost..... | 49-a | 153 |
| COUNTY TREASURER | | |
| reports as to highway maintenance funds..... | High. L., § 174 | 223 |
| superintendents of poor to pay moneys to..... | Poor L., § 3, subd. 14 | 404 |
| COURT OF GENERAL SESSIONS | | |
| city and county of New York, clerks, attendants, etc. | Code Crim. Pro., § 55 | 159 |
| CRIMINAL PROCEEDINGS | | |
| copy of official stenographer's minutes..... | Code Crim. Pro., § 221-b | 189 |
| DAIRY PRODUCTS | | |
| (See <i>Agricultural Law</i> .) | | |
| DANNEMORA STATE HOSPITAL | | |
| establishment and purpose..... | Insanity L., § 150 | 263 |
| (See <i>Insanity Law</i> .) | | |
| DANNEMORA, TOWN OF | | |
| assessment of state lands..... | Tax L., § 22 | 495 |
| DEBTOR AND CREDITOR LAW | | |
| ASSIGNMENTS FOR CREDITORS | | |
| examination of witnesses..... | 22 | 159 |
| DISCHARGE OF BANKRUPT | | |
| cancellation of judgment..... | 150 | 159 |
| JOINT DEBTORS | | |
| composition | 230 | 160 |
| DECEDENT ESTATE LAW | | |
| ADMINISTRATORS AND EXECUTORS | | |
| actions for wrongs by or against..... | 117 | 163 |
| by executor of executor..... | 121 | 163 |
| rights and liabilities..... | 117 | 163 |
| DESCENT AND DISTRIBUTION | | |
| general rules; proof of consanguinity..... | 81 | 162 |
| personal property, distribution..... | 98 | 163 |
| WILLS | | |
| devise to certain corporations..... | 19 | 161 |
| or bequest to child or descendant, not to lapse..... | 29 | 162 |
| execution, manner of..... | 21 | 161 |
| holographic, when may be proved..... | 23 | 162 |
| revocation | 34 | 162 |
| DEER | | |
| breeding and sale, provisions governing..... | Conserv. L., §§ 372, 374 | 134 |
| dead, importation, consumption in hotels, etc..... | Conserv. L., § 373 | 134 |
| nonresidents, license coupons permitting transportation..... | | |
| ..... | Conserv. L., § 185, subd. 14 | 100 |
| state parks, acquisition for..... | Conserv. L., § 157 | 91 |
| wild, hunting regulations..... | Conserv. L., § 380, subd. 11 | 139 |
| term defined | Conserv. L., §§ 190-193 | 102 |
| DENTISTRY | | |
| state dental society, membership..... | Pub. Health L., § 191 | 412 |
| DEVISES OR REQUESTS | | |
| to child or descendant, or brother or sister, not to lapse.... | Dec. Est. L., § 29 | 162 |
| (See <i>Decedent Estates Law</i> .) | | |
| DISTRICT ATTORNEYS | | |
| assistants, in certain counties..... | County L., § 203 | 155 |
| Bronx county; appointments..... | L. 1912, ch. 548, § 3 | 143 |
| salary | L. 1912, ch. 548, § 4 | 144 |
| fires, to aid state fire marshal in investigating cause..... | Insur. L., § 373 | 304 |
| fund for payment of bills..... | County L., § 12, subd. 29 | 150 |
| DOCKET BOOKS | | |
| of judgments, county clerks to give..... | Code Civ. Pro., § 1245 | 305 |
| current docket books, N. Y. county..... | Code Civ. Pro., § 1245-a | 306 |
| DOMESTIC RELATIONS LAW | | |
| ADOPTION | | |
| order, contents | 113 | 169 |
| requisites of voluntary..... | 112 | 169 |

DOMESTIC RELATIONS LAW—(Continued).

| | SECTION | PAGE |
|---|---------------------------------|------|
| HUSBAND AND WIFE | | |
| contract of wife not to bind husband..... | 55 | 169 |
| insurance on husband's life..... | 52 | 168 |
| pardon, effect on right to curtesy..... | 58 | 169 |
| validity of married woman's contracts..... | 51 | 168 |
| MARRIAGES | | |
| civil contract; effect of act of 1907..... | 10 | 164 |
| contract, how executed; recording..... | 11 | 164 |
| licenses, Indians must procure..... | 13 | 165 |
| form prescribed..... | 14 | 165 |
| town and city clerks to issue..... | 14 | 165 |
| duty of; statements..... | 15 | 166 |
| records of affidavits, etc., to be kept..... | 19 | 168 |
| solemnization by whom..... | 11 | 164 |
| DOGS | | |
| deer parks of state, prohibited in..... | <i>Conserv. L., § 193</i> | 103 |
| hunting with aid of..... | <i>Conserv. L., § 177</i> | 96 |
| sheep and Angora goats, liability for injuries..... | <i>County L., § 117</i> | 154 |
| suppression of rabies..... | <i>Agr. L., §§ 91, 96, 97</i> | 10 |
| DOWER | | |
| election by widow, decisions..... | <i>Real Prop. L., § 201</i> | 458 |
| widow's quarantine, decisions..... | <i>Real Prop. L., § 204</i> | 458 |
| DRAINAGE LAW | | |
| appeals; jurisdiction of appellate division..... | 39 | 170 |
| DUCKS | | |
| mallard and black, breeding and sale, provisions governing..... | <i>Conserv. L., § 372</i> | 134 |
| open season, limit, manner of taking..... | <i>Conserv. L., §§ 211, 212</i> | 105 |
| DUTCHESS COUNTY | | |
| transfer tax, appraisers, etc..... | <i>Tax L., § 229</i> | 503 |
| clerk, surrogate's office..... | <i>Tax L., § 234</i> | 505 |
| EDUCATION LAW | | |
| BLIND | | |
| pupils, who eligible..... | 972 | 174 |
| transfer from certain institutions to state school..... | 972 | 174 |
| state pupils, term of instruction..... | 973 | 175 |
| BOARDS OF EDUCATION | | |
| medical inspection, appropriation for..... | 310 | 172 |
| CORNELL UNIVERSITY | | |
| trustees, election, how conducted..... | 1031 | 175 |
| DISTRICT SUPERINTENDENTS | | |
| qualifications; constitutionality..... | 384 | 172 |
| LONG ISLAND SCHOOL OF AGRICULTURE | | |
| advisory board, how constituted..... | 1188 | 179 |
| appointment of trustees..... | 1186 | 179 |
| establishment and control..... | 1185 | 179 |
| trustees, powers of board..... | 1186 | 179 |
| MORRISVILLE SCHOOL OF AGRICULTURE | | |
| acquisition of lands by condemnation..... | 1094 | 177 |
| RETIREMENT OF TEACHERS | | |
| state institutions, persons entitled..... | 1095 | 178 |
| amount to be paid on retirement..... | 1098 | 178 |
| recommendation of governing board..... | 1096 | 178 |
| SCHOOL DISTRICTS | | |
| formation; apportionment of indebtedness..... | 121 | 171 |
| moneys due, action against treasurer..... | 139 | 171 |
| union free, separation of village..... | 130 | 171 |
| SCHOOL MONEYS | | |
| apportionment of state tuition..... | 493, subd. 6 | 173 |
| certificate by commissioner of education..... | 496 | 174 |
| manner of certifying and paying..... | 494 | 173 |
| SCHOOLS | | |
| free to resident pupils; residence..... | 567 | 174 |
| TRUSTEES | | |
| vacancies, appointment or election to fill..... | 233 | 172 |

INDEX TO LAWS.

619

| | SECTION | PAGE |
|---|------------------------------------|------|
| EELS | | |
| taking in marine waters..... | <i>Conserv. L.</i> , §§ 330, 331 | 130 |
| weirs and pots, use..... | <i>Conserv. L.</i> , § 256 | 113 |
| ELECTION LAW | | |
| BALLOTS | | |
| form of general..... | 331 | 188 |
| BOARDS OF ELECTION | | |
| employees, appointment | 197 | 187 |
| establishment; qualifications of members..... | 190 | 186 |
| recommendation for appointment..... | 194 | 187 |
| salaries of commissioners of election..... | 193 | 187 |
| CANVASS | | |
| original statement, failure to file..... | 373 | 188 |
| CONVENTIONS | | |
| national, election of delegates..... | 53 | 184 |
| state, primaries for election of delegates..... | 111, <i>subd.</i> 2 | 185 |
| EMBLEMS | | |
| constitutionality of law | 57 | 184 |
| ENROLLMENT OF VOTERS | | |
| correction of lists, where person enrolled under wrong emblem | 14-a | 181 |
| statement required; form..... | 14-a | 181 |
| NOMINATION OF CANDIDATES | | |
| certificates, filing, mandamus..... | 123 | 186 |
| independent, signers of certificates..... | 123 | 185 |
| vacancies, filling | 135 | 186 |
| PARTY ORGANIZATION | | |
| committees, election of members..... | 37 | 183 |
| review of election of members..... | 39 | 183 |
| congressional committee, members..... | 37 | 183 |
| county committee, designation of members..... | 37 | 183 |
| existing committees continued..... | 35 | 184 |
| judicial committee, members..... | 37 | 183 |
| senatorial district committees, members..... | 37 | 183 |
| state committee, members..... | 36 | 182 |
| qualifications of members..... | 36 | 182 |
| vacancies, how filled..... | 36 | 182 |
| PRIMARIES | | |
| ballots, official, order of names | 58 | 184 |
| delegates to conventions..... | 111, <i>subd.</i> 2 | 185 |
| organization and conduct, mandamus | 70 | 185 |
| REGISTRATION | | |
| duty of inspectors..... | 159 | 186 |
| other than general elections..... | 161 | 186 |
| ELECTIONS | | |
| primary, misconduct as to petitions..... | <i>Pen. L.</i> , § 760-a | 388 |
| ELECTRIC CORPORATIONS | | |
| reorganization, powers of public service commissions..... | <i>Pub. Serv. Com. L.</i> , § 69-a | 426 |
| ELECTRIC-LIGHT CORPORATION | | |
| payment of taxes to county treasurer | <i>Tax L.</i> , § 73 | 499 |
| ELK | | |
| breeding and sale, provisions governing..... | <i>Conserv. L.</i> , § 194 | 103 |
| breeding and sale, provisions governing..... | <i>Conserv. L.</i> , § 372 | 134 |
| state parks, acquisition for..... | <i>Conserv. L.</i> , § 157 | 91 |
| wild, no open season, importation for breeding..... | <i>Conserv. L.</i> , § 194 | 103 |
| EMPLOYERS AND EMPLOYEES | | |
| (See <i>Labor Law</i> .) | | |
| EMPLOYER'S LIABILITY | | |
| for injuries; decisions..... | <i>Labor L.</i> , §§ 200-202-a | 338 |
| (See <i>Labor Law</i> .) | | |
| EMPLOYMENT AGENCIES | | |
| regulations, enforcement..... | <i>Gen. Bus. L.</i> , § 191 | 197 |
| ENROLLMENT OF VOTERS | | |
| (See <i>Election Law</i> .) | | |
| ERIE COUNTY | | |
| county judge and surrogate, salaries..... | <i>County L.</i> , § 232 | 157 |

| ERIE COUNTY—(Continued). | | SECTION | PAGE |
|---|---|----------------|-------------|
| transfer tax, appraisers, etc. | <i>Tax L.</i> , § 229 | | 503 |
| assistants, etc., surrogate's..... | <i>Tax L.</i> , § 234 | | 505 |
| ESCHEAT | | | |
| release, petitions for, by whom..... | <i>Pub. Lands L.</i> , § 60 | | 421 |
| EVIDENCE | | | |
| documents from foreign countries, authentication..... | <i>Code Civ. Pro.</i> , § 956 | | 188 |
| EXECUTORS AND ADMINISTRATORS | | | |
| judicial settlement, petition..... | <i>Code Civ. Pro.</i> , § 2728 | | 190 |
| citation to be issued..... | <i>Code Civ. Pro.</i> , § 2728 | | 190 |
| sale of personal property, for payment of debts..... | <i>Code Civ. Pro.</i> , § 2717 | | 190 |
| EXPLOSIVES | | | |
| fishing, use and possession upon waters forbidden..... | <i>Conserv. L.</i> , § 245 | | 112 |
| manufacture and storage regulated..... | <i>Insur. L.</i> , §§ 358-368 | | 296 |
| (See <i>Insurance Law</i> , subheading <i>State Fire Marshal</i> .) | | | |
| EXTORTION | | | |
| definition | <i>Pen. L.</i> , § 850 | | 389 |
| punishment | <i>Pen. L.</i> , § 852 | | 389 |
| threats may constitute | <i>Pen. L.</i> , § 851 | | 389 |
| FACTORIES | | | |
| (See <i>Labor Law</i> .) | | | |
| FARM NAMES | | | |
| recording; fee | <i>L. 1912, ch. 145</i> , §§ 1, 2 | | 191 |
| cancellation | <i>L. 1912, ch. 145</i> , § 4 | | 191 |
| transfer of farm, effect | <i>L. 1912, ch. 145</i> , § 3 | | 191 |
| FEEDING STUFFS, CONCENTRATED COMMERCIAL | | | |
| (See <i>Agricultural Law</i> .) | | | |
| FIRE COMPANIES | | | |
| town, town board may appoint | <i>Town L.</i> , § 310 | | 537 |
| appropriation for maintenance | <i>Town L.</i> , § 313 | | 537 |
| assessment of expense for maintenance | <i>Town L.</i> , § 314 | | 538 |
| ordinances regulating | <i>Town L.</i> , § 315 | | 538 |
| FIRE DRILLS | | | |
| in factories; regulations | <i>Labor L.</i> , § 83-a | | 328 |
| FIRE ESCAPES | | | |
| tenement houses, construction | <i>Ten. House L.</i> , § 16 | | 514 |
| (See <i>Insurance Law</i> , heading <i>State Fire Marshal</i> .) | | | |
| FIRE INSURANCE | | | |
| rate-making associations, business regulated | <i>Insur. L.</i> , § 241 | | 280 |
| (See <i>Insurance Law</i> .) | | | |
| FIRE MARSHAL, STATE | | | |
| duties, prevention of fires | <i>Insur. L.</i> , § 351 | | 292 |
| explosives, duties as to..... | <i>Insur. L.</i> , §§ 358-368 | | 296 |
| office created | <i>Insur. L.</i> , § 350 | | 292 |
| (See <i>Insurance Law</i> .) | | | |
| FIRES | | | |
| factories, provisions to prevent | <i>Labor L.</i> , §§ 83-a-83-c | | 328 |
| (See <i>Labor Law</i> .) | | | |
| forest, duties of supervisor..... | <i>Town L.</i> , § 98, subd. 8 | | 530 |
| forest, provisions to prevent | <i>Conserv. L.</i> , §§ 91-107 | | 76 |
| (See <i>Conservation Law</i> .) | | | |
| prevention and investigation as to causes | <i>Insur. L.</i> , § 369 | | 302 |
| (See <i>Insurance Law</i> , subheading <i>State Fire Marshal</i> .) | | | |
| FISH AND GAME | | | |
| protection, provisions for. (See <i>Conservation Law</i> .) | | | |
| FOOD COMMISSION | | | |
| inquiries as to prices of food | <i>L. 1911, ch. 787, § 3, as am. by L., 1912, ch. 177</i> | | 191 |
| FOODS | | | |
| adulteration or misbranded, prohibitions as to | <i>Agr. L.</i> , § 200 | | 11 |
| definition; what constitutes | <i>Agr. L.</i> , § 201 | | 11 |
| FOREIGN DOCUMENTS | | | |
| authentication, how made | <i>Code Civ. Pro.</i> , § 956 | | 188 |

INDEX TO LAWS.

621

FOREST, FISH AND GAME LAW

(See *Conservation Law*.)

FOREST LANDS

| | SECTION | PAGE |
|--|------------------------------|----------|
| acquisition and development by county, town or village.. | <i>Gen. Mun. L.</i> , § 72-a | 206 |
| exemption from taxation | <i>Tax L.</i> , §§ 16, 17 | 489, 491 |

FOREST PRESERVE

(See also *Conservation Law*, parks and reservations, state.)

| | | |
|--------------------------------------|------------------------------------|-----|
| dogs prohibited in | <i>Conserv. L.</i> , § 193 | 103 |
| lands included in | <i>Conserv. L.</i> , § 50 | 58 |
| trespasses, injunction against | <i>Conserv. L.</i> , § 63, subd. 1 | 65 |

FOREST RANGERS

| | | |
|--|--------------------------------|-----|
| compensation fixed by town board | <i>Town L.</i> , § 98, subd. 8 | 530 |
|--|--------------------------------|-----|

FORESTRY

(See *Conservation Law*.)

| | | |
|---|---|-----|
| publication of pamphlets and circulars | <i>Conserv. L.</i> , § 55, subd. 4 | 61 |
| reforestation and underplanting | <i>Conserv. L.</i> , § 89 | 73 |
| Syracuse College, appointment of trustees | | |
| ..... | <i>L. 1911, ch. 851, § 3, as am. by L., 1912, ch. 15</i> | 193 |
| admission to college | <i>L., 1911, ch. 851, § 6, as am. by L., 1912, ch. 15</i> | 193 |

FORGERY

| | | |
|---|------------------------|-----|
| false certificates to instruments | <i>Pen. L.</i> , § 885 | 390 |
| entries in books of accounts | <i>Pen. L.</i> , § 889 | 391 |
| tickets to fair grounds, etc. | <i>Pen. L.</i> , § 889 | 390 |
| uttering forged instruments..... | <i>Pen. L.</i> , § 881 | 390 |

GALLINULES

| | | |
|--------------------------|----------------------------|-----|
| open season, limit | <i>Conserv. L.</i> , § 213 | 106 |
|--------------------------|----------------------------|-----|

GAME

(See *Conservation Law*, and also names of animals.)

GAME PROTECTORS

| | | |
|---|------------------------------------|-----|
| bonds and sureties | <i>Conserv. L.</i> , § 167 | 93 |
| corrupt practices, penalties for | <i>Conserv. L.</i> , § 169 | 94 |
| fishing vessels to carry..... | <i>Conserv. L.</i> , § 281 | 117 |
| forest fire fighting, powers and duties | <i>Conserv. L.</i> , § 92, subd. 2 | 78 |
| nets, seizure, destruction or sale | <i>Conserv. L.</i> , § 282 | 117 |
| number and designation | <i>Conserv. L.</i> , § 165 | 92 |
| powers and duties | <i>Conserv. L.</i> , § 169 | 94 |
| rating and removal | <i>Conserv. L.</i> , § 166 | 92 |
| records and reports | <i>Conserv. L.</i> , § 170 | 94 |
| salaries and expenses | <i>Conserv. L.</i> , § 168 | 93 |
| special, appointment | <i>Conserv. L.</i> , § 171 | 94 |
| trespass upon state lands, arrests | <i>Conserv. L.</i> , § 63, subd. 1 | 65 |

GAS CORPORATIONS

| | | |
|---|------------------------------------|-----|
| reorganization, powers of public service commissions. | <i>Pub. Serv. Com. L.</i> , § 69-a | 426 |
|---|------------------------------------|-----|

GEESE

| | | |
|--|----------------------------|-----|
| open season, limit, manner of taking | <i>Conserv. L.</i> , § 211 | 105 |
|--|----------------------------|-----|

GENERAL BUSINESS LAW

APPLES, QUINCES AND PEARS

| | | |
|---------------------------|---|-----|
| provisions repealed | 9 | 194 |
|---------------------------|---|-----|

CONTAINERS

| | | |
|---|------|-----|
| barrel, dimensions | 16-a | 194 |
| contents noted on outside | 17 | 194 |
| definitions of "container," "person" | 17-c | 195 |
| examination by superintendent of weights and measures.... | 18 | 196 |
| guaranty from wholesaler or manufacturer | 17-b | 195 |
| penalties for violation | 18-a | 196 |
| prosecution for violation | 18 | 195 |

EMPLOYMENT AGENCIES

| | | |
|---------------------------------------|--------------|-----|
| complaints against licensed | 191, subd. 3 | 197 |
| revocation of licenses by mayor | 191, subd. 3 | 197 |

HOTELS

| | | |
|---|-----|-----|
| liability for loss of property of guest | 200 | 198 |
| for loss of horse | 203 | 198 |

SALE OF COMMODITIES

| | | |
|---|----|-----|
| meat, meat products and butter sold by weight | 16 | 194 |
|---|----|-----|

USURY

| | | |
|--------------------------------------|-----|-----|
| application to private bankers | 371 | 198 |
|--------------------------------------|-----|-----|

GENERAL BUSINESS LAW—(Continued)

| | SECTION | PAGE |
|---|----------------------------------|------|
| USURY—(Continued). | | |
| contract in foreign state | 371 | 198 |
| WEIGHTS AND MEASURES | | |
| sale of commodities in containers | 16 | 194 |
| superintendent of, duties as to containers | 18 | 195 |
| GENERAL CITY LAW | | |
| plumbers, unlicensed | 45 | 199 |
| GENERAL CONSTRUCTION LAW | | |
| quorum, power | 41 | 199 |
| GENERAL CORPORATION LAW | | |
| BANKING POWERS | | |
| prohibited | 22 | 203 |
| DIRECTORS | | |
| election, powers of supreme court | 32 | 203 |
| quorum and powers of majority | 34 | 203 |
| DISSOLUTION OF CORPORATION | | |
| attorney general to bring proceedings | 102 | 204 |
| before expiration of time limit | 221 | 204 |
| receivers, appointment | 306 | 204 |
| FOREIGN CORPORATIONS | | |
| certificate of authority | 15 | 201 |
| closing business, what constitutes | 15 | 201 |
| penalty for failure to procure | 15 | 202 |
| proof required before granting | 16 | 203 |
| NAMES | | |
| effect of change | 63 | 204 |
| use of certain prohibited | 6 | 200 |
| "Lucretia Mott," not permitted | 6 | 200 |
| GENERAL MUNICIPAL LAW | | |
| CONTRACTS | | |
| separate specifications for plumbing, heating and ventilating | 88 | 208 |
| FOREST LANDS | | |
| acquisition by county, town or village | 72-a | 206 |
| development and disposition | 72-a | 207 |
| issue and sale of bonds for purchase and development..... | 72-a | 207 |
| TAXPAYERS ACTION | | |
| right to maintain | 51 | 205 |
| GETTYSBURG ANNIVERSARY | | |
| celebration, commission to provide for | L. 1912, ch. 227 | 208 |
| leave of absence for veterans to attend | L. 1912, ch. 144 | 47 |
| GOVERNOR | | |
| boundary between New York and Connecticut, communications | | |
| relative to | State L., § 2 | 472 |
| canals, commission for operation, appointment of members.. | L. 1912, ch. 9 | 41 |
| close season, special, proclamation in time of drought.... | Conserv. L., § 107 | 80 |
| death sentence, district attorneys to report reasons for delay of | | |
| appeals | Code Crim. Pro., §§ 308-a, 536-a | 16 |
| feeble-minded, criminals and other defectives, board of examiners, | | |
| appointment | Pub. H. L., § 350 | 419 |
| Gettysburg semi-centennial celebration, attendance | L. 1912, ch. 227 | 208 |
| Long Island agricultural school, appointment of trustees | | |
| ..... | Educ. L., § 1186 | 179 |
| national guard and naval militia, enlisted men, fixing of extra | | |
| daily allowance | Military L., § 210 | 367 |
| Panama-Pacific exposition commission, appointment of five mem- | | |
| bers | L. 1912, ch. 541 | 381 |
| Saratoga battle monument dedication commission, appointment of | | |
| member | L. 1912, ch. 489 | 373 |
| GOWANDA STATE HOMEOPATHIC HOSPITAL | | |
| continued | Insanity L. § 40 | 236 |
| (See <i>Insanity Law</i> .) | | |
| GROUSE | | |
| carcasses, importation, consumption in hotels, etc. | Conserv. L., § 373 | 136 |
| defined | Conserv. L., § 380, subd. 12 | 139 |
| open season, limit | Conserv. L., § 214 | 106 |

INDEX TO LAWS.

623

| | SECTION | PAGE |
|---|-------------------------------|------|
| HARES AND RABBITS | | |
| open season, limit, sale | <i>Conserv. L., § 196</i> | 103 |
| HEALTH OFFICER | | |
| indigent insane, duties as to | <i>Insanity L., §§ 87, 88</i> | 249 |
| HIGHWAY LAW | | |
| CITIES | | |
| second and third classes, additional work | 137 | 216 |
| connecting highways | 138 | 217 |
| cost of construction, apportionment | 143 | 220 |
| CLASSIFICATION | | |
| state, county and town highways, county roads | 3 | 210 |
| COUNTY HIGHWAYS | | |
| cities of second and third classes, connecting to be built | 138 | 217 |
| apportionment of cost of construction | 143 | 220 |
| COUNTY HIGHWAYS | | |
| construction or improvement, apportionment | 122 | 215 |
| order determined by commission | 129 | 216 |
| resolution of board of supervisors to provide for raising money | 239 | 218 |
| COUNTY HIGHWAYS | | |
| county or town may borrow money | 142 | 219 |
| defined | 3 | 210 |
| division of cost of construction | 141 | 218 |
| estimate of cost of maintenance | 21 | 210 |
| maintenance of detours during construction | 160 | 221 |
| payments by county treasurer | 141 | 218 |
| DEFINITIONS | | |
| "commission" | 2 | 210 |
| "county superintendent" | 2 | 210 |
| "department" | 2 | 210 |
| "district superintendent" | 2 | 210 |
| highway includes what | 2 | 210 |
| "town superintendent" | 2 | 210 |
| HIGHWAYS | | |
| construction by county and town | 320 | 226 |
| board of supervisors to adopt resolution | 320 | 226 |
| bonds may be issued | 320 | 227 |
| contracts; plans and specifications | 320 | 227 |
| defective, liability of town | 74 | 211 |
| machinery, tools and implements | 49 | 211 |
| LAYING OUT, ALTERING AND DISCONTINUANCE | | |
| dedication, what constitutes | 191 | 224 |
| notice of meeting of commissioners | 195 | 225 |
| MAINTENANCE AND REPAIR | | |
| state and county highways, apportionment of moneys appropriated | 171 | 221 |
| commission to provide for | 170 | 221 |
| compensation of town superintendents | 175 | 223 |
| cost to towns, villages and cities | 172 | 222 |
| disbursement of funds | 173 | 223 |
| liability of state for damages | 176 | 224 |
| reports of county treasurers | 174 | 223 |
| MOTOR VEHICLES | | |
| license of chauffeurs | 289 | 226 |
| registration, violation of law | 282 | 225 |
| number to be displayed | 286 | 226 |
| RIGHT OF WAY | | |
| state and county highways, costs of commissioners | 154 | 220 |
| STATE HIGHWAYS | | |
| defined | 3 | 210 |
| estimate of cost of maintenance | 21 | 210 |
| maintenance of detours during construction | 160 | 221 |
| routes specified | 120 | 212 |
| HIGHWAYS | | |
| State bonds for improvement | <i>L. 1912, ch. 298</i> | 228 |
| (See <i>Highway Law</i> .) | | |
| taxes levied for, legalized | <i>L. 1912, ch. 64</i> | 486 |

| | SECTION | PAGE |
|---|--|------|
| HOSPITALS | | |
| indigent persons, care and treatment | <i>Poor L.</i> , § 30, <i>subd.</i> 2 | 404 |
| HOTELS | | |
| liens of hotel keepers | <i>Lien L.</i> , § 181 | 348 |
| (See <i>Lien Law.</i>) | | |
| safe for valuables, liability for loss of property of guest .. | <i>Gen. Bus. L.</i> , § 200 | 198 |
| HUDSON RIVER STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| ICEFISH | | |
| open season, size, sale | <i>Conserv. L.</i> , § 241 | 111 |
| IMMIGRANTS | | |
| industries and immigration bureau, annual reports of operations | <i>Labor L.</i> , § 156-a | 338 |
| complaints of fraud, extortion, etc., investigation .. | <i>Labor L.</i> , § 153, <i>subd.</i> 5 | 335 |
| education of aliens, methods and subjects | <i>Labor L.</i> , § 153, <i>subd.</i> 3 | 334 |
| employment or contract labor agencies, inspection .. | <i>Labor L.</i> , § 153, <i>subd.</i> 4 | 334 |
| investigations, designations of officials for, powers .. | <i>Labor L.</i> , § 154 | 335 |
| labor camps, inspection | <i>Labor L.</i> , § 153, <i>subd.</i> 4 | 334 |
| lodging places for immigrants, bonds of proprietors .. | <i>Labor L.</i> , § 156 | 336 |
| defined | <i>Labor L.</i> , § 156, <i>subd.</i> 4 | 337 |
| inspection | <i>Labor L.</i> , § 153, <i>subd.</i> 4 | 334 |
| license renewals, sworn statements | <i>Labor L.</i> , § 156, <i>subd.</i> 1 | 336 |
| mentally defective, deportation | <i>Insanity L.</i> , § 19 | 234 |
| provisions governing, penalties for violations | <i>Penal L.</i> , § 1275, <i>subd.</i> a | |
| special investigators, number, salaries, labor law amended .. | <i>Labor L.</i> , § 152 | 333 |
| IMMUNITY | | |
| from prosecution, waiver, statement filed | <i>Pen. L.</i> , § 2446 | 397 |
| INCOMPETENT PERSON | | |
| (See <i>Insanity Law.</i>) | | |
| committee of property, where person is confined in state institu- tion | <i>Code Civ. Pro.</i> , § 2323-a | 354 |
| INSANE | | |
| care and treatment | | |
| (See <i>Insanity Law.</i>) | | |
| INSANITY | | |
| proceedings to inquire into | <i>Insanity L.</i> , § 82 | 246 |
| (See <i>Insanity Law.</i>) | | |
| INSANITY LAW | | |
| Albany county, charities commissioner, duties relative to insane .. | 87, 88 | 249 |
| alienists board, name changed to bureau of deportation | 19 | 234 |
| attorneys for state hospitals, positions abolished | 18 (<i>rep.</i>) | 234 |
| Bellevue and allied hospitals, duties relative to insane | 87, 88 | 249 |
| commitment proceedings | 87, 88 | 249 |
| Dannemora State Hospital, assistant physicians, number | 155, <i>subd.</i> 2 | 263 |
| medical superintendent, qualifications | 152 | 263 |
| name of Dannemora State Hospital for Insane Convicts changed to | 150 | 263 |
| officers, residence upon grounds | 155, <i>subd.</i> 2 | 263 |
| salaries and allowances, aggregate and payment | 154 | 263 |
| patients, communication with | 163 | 266 |
| qualifications for admission | 150 | 263 |
| retention or discharge after expiration of terms as con- victs | 159, 160 | 265 |
| transfers from penal institutions | 158, 162 | 264 |
| definition of certain terms | 2 | 232 |
| deportation bureau, membership, powers and duties | 19 | 234 |
| name of alienists board changed to | 19 | 234 |
| health officers, local, duties relative to insane | 87, 88 | 249 |
| immigrants, deportation bureau's powers and duties | 19 | 234 |
| insanity proceedings, who may institute | 82 | 246 |
| lunacy commission, name changed to state hospital commission .. | 2, 3 | 232 |
| Matteawan State Hospital, assistant physicians, number | 135, <i>subd.</i> 2 | 261 |
| officers, salaries payable twice monthly | 134 | 261 |
| patients, admitted under §§ 659, 836, of code of criminal pro- cedure, minutes of proceedings to accompany | 130 | 260 |

INSANITY LAW—(Continued).

Matteawan State Hospital—(Continued).

| | SECTION | PAGE |
|--|--------------|------|
| patients—(Continued). | | |
| discharge allowance | 139 | 262 |
| recovery for support of | 143 (rep.) | 263 |
| transfers from other state hospitals | 142 | 262 |
| New York city, insanity, alleged cases, method of dealing with.. | 87, 88 | 249 |
| nurses to accompany deported aliens | 19 | 234 |
| penitentiaries, Dannemora State Hospital, transfers of prisoners to | 158, 162 | 264 |
| prisons, Dannemora State Hospital, transfer of prisoners to | 158, 162 | 264 |
| private institutions for insane, Bellevue and allied hospitals, duties | 87, 88 | 249 |
| patients, admission upon certificate of lunacy | 82 | 246 |
| admission upon voluntary application | 99 | 255 |
| discharge, parole or transfer to state hospitals | 94, subd. 4 | 254 |
| removal of patients from state hospitals to | 89 | 253 |
| Psychiatric Institute, independent maintenance | 171 | 266 |
| officers, food supplies | 49 | 246 |
| maintenance and residence | 172 | 266 |
| state hospitals to co-operate with | 172 | 266 |
| reformatories, Dannemora State Hospital, transfers of inmates to | 158, 162 | 264 |
| rules and regulations of state hospitals | 45, subd. 12 | 240 |
| state hospital commission chairman, choice of | 3 | 232 |
| commissioners, actions against | 58 | 245 |
| removal | 3 | 232 |
| lunacy commissioners to continue as members | 3 | 232 |
| meetings, elimination of provisions relative to | 4 | 233 |
| name of lunacy commission changed to | 2, 3 | 232 |
| sanitariums and other institutions for sick or infirm, visitation | 9 | 233 |
| state hospitals in general, attorneys for, positions abolished..... | 18 (rep.) | 234 |
| buildings, cost restriction eliminated | 17 | 234 |
| by-laws, rules and regulations | 45, subd. 12 | 240 |
| condemnation proceedings to acquire property | 64 | 246 |
| employees, retirement board, composition | 119 | 250 |
| retirement fund created | 110 | 256 |
| salaries | 50 | 241 |
| food supplies to officers | 49 | 240 |
| medical staffs, meetings | 45, subd. 8 | 239 |
| officers and managers, actions against | 58 | 245 |
| State Hospital officers, food supplies and quarters..... | 49 | 240 |
| paroled patients, not liable for expenses of | 94, subd. 3 | 254 |
| patients, certificates of lunacy, admission and retention upon.. | 82 | 246 |
| citizenship qualifications for admission | 40 | 236 |
| court orders for admission, ten days' limit..... | 82 | 246 |
| examination upon admission | 45, subd. 1 | 238 |
| other than poor and indigent, admission | 89 | 253 |
| removal to private institutions | 89 | 253 |
| Psychiatric Institute, co-operation with | 172 | 266 |
| quarters for physicians | 49 | 240 |
| stewards, appointment | 45, subd. 2 | 238 |
| superintendents, meetings, attendance of managers | 48 | 240 |
| powers and duties | 45 | 238 |

INSURANCE LAW

| | | |
|---|-----|-----|
| ADVANCE PREMIUM CORPORATIONS | | |
| fire insurance, risks permitted | 267 | 289 |
| management, expense limited | 267 | 289 |
| reinsurance regulated | 267 | 290 |
| reserve fund to be maintained | 267 | 289 |
| surplus, amount required | 267 | 290 |
| APPLICATION | | |
| of chapter | 1 | 268 |
| CAPITAL AND SURPLUS | | |
| investment regulated | 16 | 268 |
| DELINQUENT CORPORATIONS | | |
| Application of section | 63 | 271 |
| dissolution on notice..... | 63 | 274 |
| liquidation, causes | 63 | 271 |
| application for order to show cause | 63 | 272 |
| appearances on return of order | 63 | 272 |
| SUP. III—40 | | |

INSURANCE LAW—(Continued).**DELINQUENT CORPORATIONS—(Continued).****liquidation—(Continued).**

| | SECTION | PAGE |
|--|---------|------|
| foreign corporation, proceedings | 63 | 273 |
| injunction restraining further business | 63 | 272 |
| order directing | 63 | 273 |
| service of order to show cause | 63 | 274 |
| special deputies, appointment | 63 | 274 |
| superintendent of insurance, rules and regulations | 63 | 274 |

FIRE INSURANCE CORPORATIONS

| | | |
|---|-----|----------|
| agents and brokers, definitions | 142 | 282, 285 |
| certificates of authority, when granted | 142 | 282, 285 |
| applications, contents | 142 | 284, 286 |
| fee to be paid | 142 | 283, 286 |
| revocation by superintendent | 142 | 283, 286 |
| review by certiorari | 142 | 284, 287 |

FIRE INSURANCE CORPORATIONS

| | | |
|-----------------------------------|-----|-----|
| incorporation | 110 | 280 |
| policy, standard to be used | 121 | 280 |
| rate-making regulated | 241 | 280 |

LIFE, HEALTH AND CASUALTY CORPORATIONS

| | | |
|------------------------------------|----|-----|
| certificate of incorporation | 70 | 277 |
| contents | 70 | 278 |
| proof and acknowledgment | 70 | 278 |
| policies, kinds of insurance | 70 | 276 |

LIFE INSURANCE CORPORATIONS

| | | |
|--|----|-----|
| loans of surplus to policy holders | 16 | 269 |
| policies, entire contract stated | 58 | 271 |
| form and contents | 58 | 271 |
| lapsed or forfeited, surrender value | 88 | 278 |
| notice before forfeiture | 92 | 279 |

RATE-MAKING ASSOCIATIONS

| | | |
|---|-----|-----|
| application | 141 | 282 |
| articles of agreement and by-laws filed by superintendent | 141 | 280 |
| examination by superintendent | 141 | 281 |
| rates not to discriminate | 141 | 281 |
| record of proceedings to be kept | 141 | 282 |
| schedule of rates to be filed | 141 | 281 |

REBATING AND DISCRIMINATIONS

| | | |
|---|----|-----|
| applicable to all insurance corporations | 65 | 275 |
| division of commissions permitted | 65 | 275 |
| inducements to take insurance | 65 | 275 |
| life insurance corporations | 89 | 279 |
| presentation of articles less than \$1 in value | 65 | 276 |
| violation a misdemeanor | 65 | 276 |
| short title | 1 | 268 |

STATE FIRE MARSHAL

| | | |
|--|-----|-----|
| annual report | 371 | 303 |
| appointment; term; salary | 350 | 292 |
| compensation of assistants | 374 | 304 |
| deputies, appointment and salaries | 352 | 293 |
| district attorney to aid | 373 | 304 |
| duties as to prevention of fires | 351 | 292 |
| combustibles and explosives | 351 | 292 |
| fire alarm systems | 351 | 292 |
| fire escapes, construction and maintenance | 351 | 292 |
| means of exit in case of fire | 351 | 292 |
| explosives, definitions | 358 | 296 |
| fire arms not to be discharged near | 367 | 302 |
| kept in suitable containers | 360 | 299 |
| magazines for storage | 361 | 299 |
| manufacture and storage | 359 | 297 |
| distances from buildings | 359 | 298 |
| penalties; misdemeanor | 368 | 302 |
| records of sale | 365 | 302 |
| reports to state fire marshal | 363 | 300 |
| transportation regulated | 364 | 301 |
| fire department officers as assistants | 353 | 293 |
| inspection of cause of fires | 354 | 293 |

INDEX TO LAWS.

627

INSURANCE LAW—(Continued).

STATE FIRE MARSHAL—(Continued).

| | SECTION | PAGE |
|---|---------|------|
| inspection of public buildings | 355 | 294 |
| other buildings and premises | 356 | 294 |
| order directing remedying defects | 356 | 295 |
| penalty for non-compliance | 356 | 295 |
| service on owner or occupant | 356 | 295 |
| powers as to investigation of fires and explosions..... | 369 | 302 |
| records of fires and explosions..... | 370 | 303 |
| steam boilers, inspection..... | 357 | 296 |
| witnesses, refusal to be sworn or to testify..... | 372 | 304 |

SUPERINTENDENT OF INSURANCE

| | | |
|---------------------------------------|----|-----|
| appointment | 2 | 268 |
| chief officer of department | 2 | 268 |
| oath of office and undertaking | 2 | 268 |
| report to legislature; contents | 46 | 270 |
| term of office | 2 | 268 |
| vacancy | 2 | 268 |

INTERPRETERS

| | | |
|------------------------------------|-----|-----|
| court, temporary appointment | 388 | 314 |
|------------------------------------|-----|-----|

JAIL

| | | |
|--|-------------------------------|-----|
| Bronx county, confinement of prisoners | <i>L. 1912, ch. 548, § 10</i> | 147 |
|--|-------------------------------|-----|

JOHN BROWN FARM

| | | |
|-------------------------------|--------------------------|----|
| description of property | <i>Conserv. L., § 54</i> | 61 |
|-------------------------------|--------------------------|----|

JUDICIARY LAW

APPELLATE DIVISION

| | | |
|---|---------------------|-----|
| attorneys, admission to practice | 88 | 309 |
| removal or suspension from practice | 88 | 309 |
| destruction of papers on order of, by county clerk or commissioner of jurors..... | 87 | 309 |
| first department, stenographers and clerks | 109 | 310 |
| official referees, appointment | 115 | 310 |
| stenographers of supreme court, salaries | 307 | 313 |
| fourth department, stenographers and clerks | 109 | 310 |
| consultation clerk, compensation | 271, <i>subd. 9</i> | 313 |
| salary of deputy clerk | 271 | 312 |
| attendants | 347 | 314 |
| stenographer and confidential clerk | 307, <i>subd. 2</i> | 314 |
| second department, official referees | 115 | 310 |
| third department, stenographers and clerks..... | 109 | 310 |
| salary of deputy clerk | 271 | 312 |
| court attendants | 347 | 314 |
| stenographers, compensation | 307, <i>subd. 2</i> | 314 |

ATTORNEYS OR COUNSELLORS

| | | |
|--|-----|-----|
| admission to practice; removal or suspension | 88 | 309 |
| contracts for compensation for services | 474 | 314 |

CONTEMPTS

| | | |
|----------------------------------|-----|-----|
| proceedings for punishment | 753 | 318 |
| order to show cause..... | 757 | 318 |
| release of offender | 775 | 318 |

COURT OF APPEALS

| | | |
|------------------------------|-----|-----|
| compensation of clerks | 262 | 312 |
|------------------------------|-----|-----|

COURT OF GENERAL SESSIONS

| | | |
|--|-----|-----|
| New York county, salaries of record clerks | 288 | 313 |
|--|-----|-----|

INTERPRETERS

| | | |
|-----------------------------|-----|-----|
| temporary appointment | 388 | 314 |
|-----------------------------|-----|-----|

OFFICIAL REFEREES

| | | |
|---|-----|-----|
| first and second departments, appointment | 115 | 310 |
| compensation | 116 | 311 |

STENOGRAPHERS

| | | |
|---|-----|-----|
| copies of proceedings on payment of fees..... | 303 | 313 |
| supreme court, first judicial district | 307 | 313 |

SUPREME COURT

| | | |
|---|-----|-----|
| appointment of clerks..... | 160 | 312 |
| clerks not to be appointed referees, receivers or commissioners | 251 | 312 |
| fifth judicial district, salaries of clerks to justices..... | 279 | 313 |

JUDICIARY LAW—(Continued).

| | SECTION | PAGE |
|---|---|------|
| TRIAL JURORS | | |
| objections as to qualifications | 502 | 317 |
| JUDGMENTS | | |
| docket books, clerks to keep..... | <i>Code Civ. Pro.</i> , § 1245 | 305 |
| form and manner of entry..... | <i>Code Civ. Pro.</i> , § 1245 | 305 |
| New York county, current docket books..... | <i>Code Civ. Pro.</i> , § 1245-a | 306 |
| satisfaction, in action where warrant of attachment is issued.... | | |
| ..... | <i>Code Civ. Pro.</i> , § 708 | 17 |
| JURORS | | |
| commissioner, destruction of papers..... | <i>Judic. L.</i> , § 87 | 309 |
| Bronx county, appointment..... | <i>L. 1912, ch. 548</i> , § 8 | 145 |
| Erie county, exemptions..... | <i>L. 1895, ch. 369</i> , § 20, <i>as am. by L. 1912, ch. 147</i> | 319 |
| qualifications of jurors..... | <i>L. 1895, ch. 369</i> , § 20, <i>as am. by L. 1912, ch. 147</i> | 319 |
| trial, objections as to qualifications..... | <i>Judic. L.</i> , § 502 | 317 |
| JUSTICES OF THE PEACE | | |
| official acts legalized..... | <i>L. 1912, ch. 71</i> | 320 |
| KINGS COUNTY | | |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates..... | <i>Tax L.</i> , § 234 | 504 |
| KINGS PARK STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law</i> .) | | |
| LABOR, COMMISSIONER OF | | |
| (See <i>Labor Law</i> .) | | |
| LABOR LAW | | |
| COMMISSIONER OF LABOR | | |
| factory inspectors, appointment and number..... | 61 | 323 |
| oaths and affidavits..... | 43 | 322 |
| EMPLOYERS' LIABILITY | | |
| for injuries; decisions..... | 200 | 338 |
| notice to be served; decisions..... | 201 | 341 |
| risks, assumption of; decisions..... | 202 | 343 |
| trial, burden of proof; decisions..... | 202-a | 343 |
| FACTORIES | | |
| children, employment certificates..... | 71 | 323 |
| evidence of age..... | 71 | 324 |
| physicians' certificates | 71 | 324 |
| report of certificates issued..... | 75 | 325 |
| drinking water to be provided..... | 88 | 329 |
| females, employment after childbirth..... | 93-a | 330 |
| fires, provisions to prevent..... | 83-a-83-c | 328 |
| automatic fire sprinklers..... | 83-b | 328 |
| fire drills | 83-a | 328 |
| fire proof receptacles..... | 83-c | 328 |
| gas jets or lights..... | 83-c | 329 |
| smoking prohibited | 83-c | 329 |
| hours of labor of children and women..... | 77 | 325 |
| exceptions as to those over 16 years of age..... | 78 | 326 |
| in tunnels and caissons..... | 134-a | 330 |
| machinery, liability for injuries..... | 81 | 327 |
| meals in certain work rooms prohibited..... | 89-a | 330 |
| registration with department of labor..... | 69 | 323 |
| unclean, articles to be labeled..... | 95 | 330 |
| wash room and water closets..... | 88 | 329 |
| HOURS OF LABOR | | |
| application to public works..... | 3 | 321 |
| children and women in factories..... | 77 | 325 |
| railroad employees, regulation..... | 8 | 321 |
| INDUSTRIES AND IMMIGRATION BUREAU | | |
| aliens, instruction of..... | 153, <i>subd. 3</i> | 334 |
| annual reports of operations..... | 156-a | 338 |
| complaints of fraud, extortion, etc., investigation..... | 153, <i>subd. 5</i> | 335 |
| employment or contract labor agencies, inspection..... | 153, <i>subd. 4</i> | 334 |
| investigations, designations of officials for, powers..... | 154 | 335 |
| labor camps, inspection..... | 153, <i>subd. 4</i> | 334 |

INDEX TO LAWS.

629

LABOR LAW—(Continued).

| INDUSTRIES AND IMMIGRATION BUREAU—(Continued). | | SECTION | PAGE |
|--|-----------------|---------|------|
| lodging places for immigrants, bonds of proprietors..... | | 156 | 336 |
| defined | | 156 | 336 |
| inspection | 153, subd. 4 | | 334 |
| license renewals, sworn statements..... | | 156 | 336 |
| special investigators, number, salaries..... | | 152 | 333 |
| MERCANTILE ESTABLISHMENTS | | | |
| females, employment after childbirth..... | | 93-a | 330 |
| MINORS | | | |
| employment in factories..... | | 70 | 323 |
| OATHS AND AFFIDAVITS | | | |
| commissioner, and other officers may take..... | | 43 | 322 |
| SCAFFOLDING | | | |
| use by employees, liability of employers..... | | 18 | 322 |
| TUNNELS AND CAISSONS | | | |
| compressed air, use regulated..... | 134-a-134-d | | 330 |
| VIOLATION | | | |
| of article 10-a a misdemeanor..... | Pen. L., § 1275 | | 393 |

LANDS

| | | |
|---|-----------------------|----|
| appropriation by conservation commission..... | Conserv. L., §§ 66-87 | 67 |
| (See <i>Conservation Law</i> .) | | |

LARCENY

| | | |
|---|-------------------|-----|
| grand, second degree..... | Pen. L., § 1296 | 394 |
| obtaining property by use of false statement..... | Pen. L., § 1293-b | 393 |

LIBEL

| | | |
|--------------------------------------|-----------------|-----|
| indictment, restrictions | Pen. L., § 1348 | 395 |
| liability of editors and others..... | Pen. L., § 1344 | 395 |

LIEN LAW

| | | | |
|---|--|-----|-----|
| CHATTEL MORTGAGES | | | |
| notice to assignee of prior mortgage..... | | 230 | 348 |
| renewal; statement to be filed..... | | 235 | 349 |
| where filed | | 232 | 349 |
| MECHANICS' LIENS | | | |
| assignment of contracts..... | | 15 | 346 |
| consent of owner..... | | 3 | 345 |
| discharge, undertaking | | 19 | 347 |
| duration of lien..... | | 17 | 346 |
| enforcement, action; trial..... | | 24 | 347 |
| extent of lien..... | | 4 | 345 |
| notice, contents | | 9 | 345 |
| filing, during progress of work..... | | 10 | 345 |
| vacating, by order of court..... | | 59 | 347 |
| MONUMENTS AND CEMETERY STRUCTURES | | | |
| liens; application of law..... | | 120 | 348 |
| PUBLIC IMPROVEMENTS | | | |
| duration of lien..... | | 18 | 346 |
| judgment in action to foreclose..... | | 60 | 347 |
| liens for furnishing material..... | | 5 | 345 |
| notice of lien, effect..... | | 12 | 346 |
| VESSELS | | | |
| maritime liens; application of law..... | | 80 | 348 |

LIQUOR TAX LAW

| | | | |
|--|-------------|------|-----|
| CERTIFICATES, LIQUOR TAX | | | |
| assignment or transfer, to be filed..... | | 12-a | 350 |
| consents of owners of dwellings..... | 15, subd. 8 | | 351 |
| where certificate has been revoked..... | 15, subd. 8 | | 351 |
| EXCISE TAXES | | | |
| upon business of trafficking in liquors..... | | 8 | 350 |
| ILLEGAL SALES | | | |
| permitting women and girls in place..... | | 30 | 353 |
| proximity of gambling room..... | | 30 | 353 |
| LOCAL OPTION | | | |
| special town meetings..... | | 13 | 350 |

LOBSTERS

| | | |
|--------------------------|-------------------------|-----|
| fishing regulations..... | Conserv. L., §§ 321-325 | 127 |
|--------------------------|-------------------------|-----|

| | | |
|---|---|-------------|
| LONG ISLAND SCHOOL OF AGRICULTURE | SECTION | PAGE |
| establishment and control..... | <i>Educ. L.</i> , §§ 1185-1188 | 179 |
| lands acquired; appropriation..... | <i>L. 1912, ch. 319</i> , §§ 2, 3 | 179 |
| LONG ISLAND STATE HOSPITAL | | |
| continued..... | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| LUNACY, STATE COMMISSION OF | | |
| designated state hospital commission..... | <i>Insanity L.</i> , § 3 | 232 |
| (See <i>Insanity Law.</i>) | | |
| LUNATICS | | |
| (See <i>Insane; Insanity Law.</i>) | | |
| committee of property, where lunatic is committed to state institution..... | <i>Code Civ. Pro.</i> , § 2323-a | 354 |
| MACCABEES OF THE WORLD, KNIGHTS | | |
| organization of tents..... | <i>Ben. Ord. L.</i> , § 2 | 35 |
| trustees, election..... | <i>Ben. Ord. L.</i> , § 2 | 35 |
| powers; investment and bonds..... | <i>Ben. Ord. L.</i> , § 3 | 35 |
| management of property..... | <i>Ben. Ord. L.</i> , § 5 | 37 |
| terms of office..... | <i>Ben. Ord. L.</i> , § 4 | 36 |
| MALICIOUS INJURY | | |
| loosening brakes on cars..... | <i>Pen. L.</i> , § 1433 | 395 |
| MANHATTAN STATE HOSPITAL | | |
| continued..... | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| MANUFACTURE | | |
| commission to investigate, report..... | | |
| ..... | <i>L. 1911, ch. 561</i> , § 3, as am. by <i>L. 1912, ch. 21</i> | 355 |
| MARINE FISHERIES | | |
| (See <i>Conservation Law.</i>) | | |
| MARRIAGES | | |
| licenses, form and issuance..... | <i>Dom. Rel. L.</i> , § 14 | 164 |
| duty of town and city clerks..... | <i>Dom. Rel. L.</i> , § 15 | 166 |
| records to be kept..... | <i>Dom. Rel. L.</i> , § 19 | 168 |
| solemnization by whom..... | <i>Dom. Rel. L.</i> , § 11 | 164 |
| (See <i>Domestic Relations Law.</i>) | | |
| MASKALONGE | | |
| open season, size, sale..... | <i>Conserv. L.</i> , § 239 | 111 |
| MATTEAWAN STATE HOSPITAL | | |
| establishment and purpose..... | <i>Insanity L.</i> , § 130 | 260 |
| (See <i>Insanity Law.</i>) | | |
| MECHANICS' LIENS | | |
| (See <i>Lien Law.</i>) | | |
| MEDICAL COLLEGES | | |
| matriculation of students..... | <i>Pub. Health L.</i> , § 166, subd. 5 | 411 |
| MEDICAL INSPECTION | | |
| boards of education may provide for..... | <i>Educ. L.</i> , § 310 | 172 |
| MEDICINE, PRACTICE OF | | |
| examinations, admission to..... | <i>Pub. Health L.</i> , § 166, subd. 5 | 411 |
| matriculation of medical students..... | <i>Pub. Health L.</i> , § 166, subd. 5 | 411 |
| MEMBERSHIP CORPORATIONS LAW | | |
| CEMETERY CORPORATIONS | | |
| abandonment of cemeteries; record of inscriptions..... | 85 | 359 |
| directors, election..... | 64 | 356 |
| changing number..... | 64 | 357 |
| special meetings for election..... | 64 | 357 |
| lot owners, taxation..... | 72 | 358 |
| notice of tax..... | 72 | 358 |
| sale of lots for unpaid tax..... | 72 | 358 |
| perpetual care of lots..... | 85 | 360 |
| MEMBERS | | |
| expulsion, by-laws regulating..... | 9 | 356 |
| submission of claims to arbitration..... | 9 | 356 |
| MEMORIAL DAY | | |
| additional appropriation for observance..... | <i>Town L.</i> , § 136-a | 532 |

INDEX TO LAWS.

631

| | | |
|--|--------------------------------|-------------|
| MIDDLETOWN STATE HOMEOPATHIC HOSPITAL | SECTION | PAGE |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| MILITARY LAW | | |
| ALLOWANCES | | |
| for headquarters of organizations..... | 218 | 370 |
| military organizations | 216 | 368 |
| audit and expenditure of funds..... | 217 | 369 |
| ARMORIES | | |
| audit of bills for maintenance..... | 182 | 364 |
| boards of supervisors, acquisition of sites..... | 185 | 366 |
| New York city, armory board..... | 183 | 364 |
| appropriations for maintenance..... | 183 | 365 |
| erection, corporate stock..... | 183 | 365 |
| estimate of expenditures for maintenance..... | 183 | 365 |
| sites, acquisition of title..... | 183 | 365 |
| sites, acquisition of..... | 185 | 366 |
| COMPENSATION | | |
| officers and enlisted men..... | 210 | 367 |
| when injured or disabled in service..... | 223 | 370 |
| NATIONAL GUARD | | |
| discharges, regulations | 103 | 362 |
| enlistments, qualifications | 95 | 361 |
| taking up dropped men..... | 101 | 361 |
| uniforms, command may adopt..... | 168 | 364 |
| NEW YORK CITY | | |
| armories, erection and maintenance..... | 183 | 364 |
| UNAUTHORIZED BODIES | | |
| incorporation, certificate not received..... | 241 | 371 |
| organization and parades prohibited..... | 241 | 371 |
| MILITIA | | |
| (See <i>Military Law.</i>) | | |
| MINK | | |
| open season | <i>Conserv. L.</i> , § 198 | 104 |
| MINNOWS | | |
| right to take..... | <i>Conserv. L.</i> , § 230 | 109 |
| taking in marine waters..... | <i>Conserv. L.</i> , § 330 | 129 |
| MISDEMEANANTS' STATE REFORMATORY | | |
| commitment; term of detention..... | <i>L. 1912, ch. 502</i> , § 4 | 476 |
| establishment and purposes..... | <i>L. 1912, ch. 502</i> , 1 | 476 |
| managers, board of | <i>L. 1912, ch. 502</i> , 2 | 476 |
| selection of site; construction..... | <i>L. 1912, ch. 502</i> , 3 | 476 |
| appropriation | <i>L. 1912, ch. 502</i> , § 5 | 477 |
| MOHANSIC STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| MONROE COUNTY | | |
| county judge and surrogate, salaries..... | <i>County L.</i> , § 232 | 158 |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates'..... | <i>Tax L.</i> , § 234 | 505 |
| MONUMENTS | | |
| Saratoga battle monument, commission..... | <i>L. 1912, ch. 489</i> | 373 |
| MONUMENTS AND CEMETERY STRUCTURES | | |
| liens on; application of law..... | <i>Lien L.</i> , § 120 | 348 |
| MOOSE, LOYAL ORDER OF | | |
| state parks, acquisition for..... | <i>Conserv. L.</i> , § 157 | 91 |
| wild, no open season, importation for breeding..... | <i>Conserv. L.</i> , § 194 | 103 |
| MOOSE | | |
| organization of lodge..... | <i>Ben. Ord. L.</i> , § 2 | 35 |
| MORRISVILLE SCHOOL OF AGRICULTURE | | |
| acquisition of lands by condemnation..... | <i>Educ. L.</i> , § 1094 | 177 |
| MORTGAGES | | |
| discharge, in counties in city of New York..... | <i>Real. Prop. L.</i> , § 322 | 461 |
| foreclosure, parties, attorney-general in behalf of state..... | <i>Code Civ. Pro.</i> , § 1627 | 374 |
| sale under, affidavits..... | <i>Code Civ. Pro.</i> , § 2396 | 374 |

| | SECTION | PAGE |
|---|----------------------------------|---------|
| MOTOR VEHICLES | | |
| registration; violation of law..... | <i>High. L.</i> , § 282 | 225 |
| number to be displayed..... | <i>High. L.</i> , § 286 | 226 |
| (See <i>Highway Law</i> .) | | |
| MUSKRATS | | |
| open season, protection of houses..... | <i>Conserv. L.</i> , § 201 | 104 |
| MUNICIPAL BUILDINGS | | |
| separate contracts for plumbing, heating and ventilating.. | <i>Gen. Mun. L.</i> , § 88 | 206 |
| MUNICIPAL CORPORATIONS | | |
| (See <i>General Municipal Law</i> .) | | |
| NASSAU COUNTY | | |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates'..... | <i>Tax L.</i> , § 234 | 505 |
| NATIONAL GUARD | | |
| (See <i>Military Law</i> .) | | |
| NEGOTIABLE INSTRUMENTS LAW | | |
| decisions | | 376-380 |
| NETS | | |
| taking fish by. (See <i>Conservation Law</i> .) | | |
| NEW YORK CITY | | |
| armories, erection and maintenance..... | <i>Mil. L.</i> , § 183 | 364 |
| (See <i>Military Law</i> .) | | |
| cemeteries, consent to acquisition of lands by board of aldermen.. | | |
| ..... | <i>Real Prop. L.</i> , § 451 | 463 |
| court of general sessions, clerks and employees..... | <i>Code Crim. Pro.</i> , § 55 | 159 |
| discharge of mortgages in counties in..... | <i>Real Prop. L.</i> , § 322 | 461 |
| rapid transit act amended..... | <i>L.</i> 1891, <i>ch.</i> | |
| 4, §§ 4, 10, 24, 26, 27, 29, 33, 34, 38, as am. by <i>L.</i> 1912, <i>ch.</i> 226 | | 432-454 |
| NEW YORK COUNTY | | |
| current docket books of judgments..... | <i>Code Civ. Pro.</i> , § 1245-a | 306 |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates'..... | <i>Tax L.</i> , § 234 | 504 |
| NEW YORK, PORT OF | | |
| health officer, residence and powers..... | <i>Pub. Health L.</i> , § 121 | 411 |
| NIAGARA COUNTY | | |
| assistant district attorney and stenographer..... | <i>County L.</i> , § 203 | 155 |
| transfer tax, appraiser..... | <i>Tax L.</i> , § 229 | 503 |
| NIAGARA RESERVATION | | |
| commissioners may permit city of Niagara Falls to lay water | | |
| mains..... | <i>Pub. Lands L.</i> , § 102 | 422 |
| construction of street railways..... | <i>Railroad L.</i> , § 191 | 430 |
| NIAGARA RIVER | | |
| fishing with nets and seines, regulations..... | <i>Conserv. L.</i> , § 277 | 116 |
| NOMINATION OF CANDIDATES | | |
| (See <i>Election Law</i> .) | | |
| NOTARIES PUBLIC | | |
| official acts legalized..... | <i>L.</i> 1912, <i>ch.</i> 78 | 380 |
| NOTICE OF TRIAL | | |
| service, filing note of issue..... | <i>Code Civ. Pro.</i> , § 977 | 380 |
| OFFICERS | | |
| (See <i>Public Officers Law</i> , and names of officers.) | | |
| ONEIDA COUNTY | | |
| transfer tax, appraisers..... | <i>Tax L.</i> , § 229 | 503 |
| clerk, surrogate's office..... | <i>Tax L.</i> , § 234 | 505 |
| ONONDAGA COUNTY | | |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates'..... | <i>Tax L.</i> , § 234 | 505 |
| ORANGE COUNTY | | |
| transfer tax, appraiser..... | <i>Tax L.</i> , § 229 | 503 |
| ORDERS | | |
| definition and form..... | <i>Code Civ. Pro.</i> , § 767 | 375 |
| OVERSEER OF THE POOR | | |
| (See <i>Insanity Law</i> ; <i>Poor Law</i> ; <i>Town Law</i> .) | | |

INDEX TO LAWS.

633

| | SECTION | PAGE |
|--|---------------------------------------|------|
| OVERSEER OF THE POOR—(Continued). | | |
| petition for commitment of insane..... | <i>Insanity L.</i> , § 82 | 246 |
| relief of indigent insane..... | <i>Insanity L.</i> , §§ 87, 88 | 249 |
| OVERSEER OF THE POOR | | |
| town, election or appointment..... | <i>Town L.</i> , § 112 | 531 |
| OYSTERS | | |
| taking and sale..... | <i>Conserv. L.</i> , §§ 313-319 | 127 |
| PALISADES INTERSTATE PARK | | |
| conservation commission, powers as to..... | <i>Conserv. L.</i> , § 55, subd. 11 | 62 |
| PANAMA-PACIFIC EXPOSITION | | |
| commission created | <i>L. 1912, ch. 541</i> , § 1 | 381 |
| expenses; officers and assistants..... | <i>L. 1912, ch. 541</i> , § 3 | 382 |
| membership, organization, etc..... | <i>L. 1912, ch. 541</i> , § 2 | 381 |
| PARKS | | |
| game, private, provisions governing..... | <i>Conserv. L.</i> , §§ 360-366 | 131 |
| PARKS AND RESERVATIONS, STATE | | |
| Adirondack state park, boundaries defined..... | <i>Conserv. L.</i> , § 51 | 58 |
| dogs prohibited in..... | <i>Conserv. L.</i> , § 193 | 103 |
| land condemnations | <i>Conserv. L.</i> , §§ 66-87 | 67 |
| trespasses, injunctions against..... | <i>Conserv. L.</i> , § 64, subd. 3 | 66 |
| Catskill state park, boundaries defined..... | <i>Conserv. L.</i> , § 52 | 60 |
| land condemnations | <i>Conserv. L.</i> , §§ 66-87 | 67 |
| trespasses, injunctions against..... | <i>Conserv. L.</i> , § 64, subd. 3 | 66 |
| conservation law provisions..... | <i>Conserv. L.</i> , §§ 56-58 | 62 |
| forest preserve, boundaries defined..... | <i>Conserv. L.</i> , § 50 | 58 |
| dogs prohibited in..... | <i>Conserv. L.</i> , § 193 | 103 |
| trespasses, injunctions against..... | <i>Conserv. L.</i> , § 64, subd. 3 | 66 |
| John Brown Farm, description of property | <i>Conserv. L.</i> , § 54 | 61 |
| Niagara state reservation, city water mains and hydrants through | <i>Pub. Lands L.</i> , § 102, subd. 8 | 422 |
| PARTNERSHIP LAW | | |
| decisions | | 383 |
| PEACE OFFICERS | | |
| expenses for injuries, board of supervisors may pay..... | <i>County L.</i> , § 250 | 159 |
| PENAL LAW | | |
| ADVERTISEMENTS | | |
| untrue and misleading..... | 421 | 385 |
| ARSON | | |
| second degree, evidence of insurance..... | 222 | 384 |
| ASSAULT | | |
| indictment in common law form..... | 240 | 384 |
| ATTORNEYS | | |
| practice without being admitted..... | 270 | 384 |
| BANKING INSTITUTIONS | | |
| false statements and rumors..... | 303 | 385 |
| falsification of books, reports, etc..... | 304 | 385 |
| CHILDREN | | |
| endangering life or health..... | 483 | 386 |
| incorrigible, in institutions, transfer..... | 486 | 387 |
| CONSPIRACY | | |
| definition and punishment..... | 580 | 387 |
| CORPORATIONS | | |
| directors of moneyed; misconduct..... | 297 | 384 |
| ELECTIONS | | |
| primary, misconduct as to petitions..... | 760-a | 388 |
| EXTORTION | | |
| defined | 850 | 389 |
| punishment | 852 | 389 |
| threats may constitute..... | 851 | 389 |
| FORGERY | | |
| definitions | 880 | 389 |
| false certificates to certain instruments..... | 885 | 390 |
| entries in books of accounts..... | 889 | 391 |
| tickets for admission to certain places..... | 889 | 390 |
| LABOR LAW | | |
| violation of provisions of article 10-a..... | 1275 | 393 |

PENAL LAW—(Continued).

| | SECTION | PAGE |
|--|-------------------------------------|---------|
| LARCENY | | |
| grand, second degree..... | 1296 | 394 |
| obtaining property by use of false statement..... | 1293-b | 393 |
| LIBEL | | |
| indictment, restrictions | 1348 | 395 |
| liability of editors..... | 1344 | 395 |
| RAILROADS | | |
| loosening brakes or couplings on cars..... | 1433 | 395 |
| WAIVER OF IMMUNITY | | |
| statement may be filed..... | 2446 | 397 |
| PERSONAL PROPERTY LAW | | |
| decisions | | 399-403 |
| PHEASANTS | | |
| breeding and sale, provisions governing..... | <i>Conserv. L., § 372</i> | 134 |
| carcasses, importation, consumption in hotels, etc..... | <i>Conserv. L., § 373</i> | 136 |
| defined | <i>Conserv. L., § 380, subd. 19</i> | 139 |
| open season, limit..... | <i>Conserv. L., § 214</i> | 106 |
| PICKEREL | | |
| defined | <i>Conserv. L., § 380, subd. 16</i> | 139 |
| open season, limit, sale..... | <i>Conserv. L., § 237</i> | 110 |
| PIGEONS | | |
| Antwerp or homing, no interference with..... | <i>Conserv. L., § 218</i> | 107 |
| PIKE | | |
| defined | <i>Conserv. L., § 380, subd. 16</i> | 139 |
| open season, limit, sale..... | <i>Conserv. L., § 237</i> | 110 |
| PIKEPERCH | | |
| defined | <i>Conserv. L., § 380, subd. 17</i> | 139 |
| open season, size, sale..... | <i>Conserv. L., § 236</i> | 110 |
| PLOVER | | |
| carcasses, importation, consumption in hotels, etc..... | <i>Conserv. L., § 373</i> | 136 |
| POLICE COURT | | |
| conservation law, jurisdiction of offenses..... | <i>Conserv. L., § 31</i> | 56 |
| POOR LAW | | |
| COUNTY SUPERINTENDENTS OF POOR | | |
| payment of money to county treasurer..... | 3 | 404 |
| POOR PERSONS | | |
| hospital accommodations | 30, subd. 2 | 404 |
| temporary relief | 23 | 404 |
| SOLDIERS, SAILORS AND MARINES | | |
| burial, payment of expense..... | 84 | 405 |
| POOR PERSONS | | |
| (See <i>Insanity Law; Poor Law.</i>) | | |
| patients in tuberculosis hospital, charge against towns, etc.... | | |
| ..... | <i>County L., § 49-a</i> | 153 |
| PRIMARIES, OFFICIAL | | |
| (See <i>Election Law.</i>) | | |
| PRISON LAW | | |
| BERTILLON SYSTEM | | |
| duties of officers of penal institutions..... | 21 | 406 |
| measurement of prisoners..... | 21 | 406 |
| card indexes | 21 | 406 |
| PRISONERS | | |
| commutation of sentences..... | 230 | 408 |
| discharge of paroled..... | 218 | 408 |
| indeterminate sentences | 230 | 408 |
| REFORMATORIES | | |
| compensation of officers and employees..... | 289 | 408 |
| STATE PRISONS | | |
| compensation of officers..... | 114 | 407 |
| payment monthly | 115 | 407 |
| for women, salary of matron..... | 94 | 408 |
| PRISONERS | | |
| indeterminate sentences | <i>Prison L., § 230</i> | 408 |
| (See <i>Prison Law.</i>) | | |

INDEX TO LAWS.

635

| | SECTION | PAGE |
|--|-----------------------------------|----------|
| PROCREATION | | |
| operations to prevent..... | <i>Pub. Health L., §§ 350-353</i> | 419, 420 |
| PSYCHIATRIC INSTITUTE | | |
| maintenance and control..... | <i>Insanity L., §§ 171, 172</i> | 266 |
| (See <i>Insanity Law.</i>) | | |
| PUBLIC BUILDINGS LAW | | |
| soldiers' and sailors' home, admission..... | 64 | 410 |
| PUBLIC HEALTH LAW | | |
| CHIROPODY | | |
| examinations, who admitted..... | 272 | 414 |
| conduct by medical examiners..... | 272 | 415 |
| eligibility to practice without..... | 272 | 413 |
| license to practice, issuance and registration..... | 272 | 415 |
| not to register without..... | 278 | 416 |
| practice without registration prohibited..... | 278 | 416 |
| registration by county clerk..... | 280 | 416 |
| violations of article, penalties..... | 281 | 417 |
| DENTISTRY | | |
| state dental society, membership..... | 191 | 412 |
| MEDICINE | | |
| matriculation of medical students..... | 166, subd. 5 | 411 |
| PORT OF NEW YORK | | |
| health officer, residence and powers..... | 121 | 411 |
| PROCREATION, OPERATIONS TO PREVENT | | |
| board of examiners, appointment..... | 350 | 419 |
| duties and powers..... | 351 | 419 |
| persons operated upon..... | 351 | 419 |
| hearing; right to counsel..... | 352 | 420 |
| PUBLIC IMPROVEMENTS | | |
| liens on account of..... | <i>Lien L., § 5</i> | 345 |
| (See <i>Lien Law.</i>) | | |
| PUBLIC LANDS LAW | | |
| ESCHEAT | | |
| release, petitions for, by whom..... | 60 | 421 |
| NIAGARA RESERVATION | | |
| Niagara Falls city may lay water mains..... | 102, subd. 8 | 422 |
| PUBLIC OFFICERS LAW | | |
| UNDERTAKINGS | | |
| form and execution..... | 11 | 423 |
| surety company, payment of cost..... | 11 | 423 |
| PUBLIC SERVICE COMMISSIONS LAW | | |
| REORGANIZATION | | |
| electric corporations..... | 69-a | 426 |
| gas corporations..... | 69-a | 426 |
| railroad corporations..... | 55-a | 425 |
| telegraph and telephone companies..... | 101-a | 426 |
| QUAIL | | |
| dead, importation, consumption in hotels, etc..... | <i>Conserv. L., § 373</i> | 136 |
| open season, limit..... | <i>Conserv. L., § 214</i> | 106 |
| QUEENS COUNTY | | |
| transfer tax, appraisers, etc..... | <i>Tax L., § 229</i> | 503 |
| assistants, etc., surrogates..... | <i>Tax L., § 234</i> | 505 |
| RABBITS | | |
| open season, limit and sale..... | <i>Conserv. L., § 196</i> | 103 |
| RABIES | | |
| quarantine of dogs. (See <i>Agricultural Law; Dogs.</i>) | | |
| RACCOONS | | |
| open season..... | <i>Conserv. L., § 198</i> | 104 |
| RAILROAD LAW | | |
| STREET RAILROADS | | |
| public grounds and parks, construction..... | 191 | 430 |
| rate of fare..... | 181 | 430 |
| use of streets; rate of speed..... | 178 | 429 |
| RAILROADS | | |
| (See <i>Public Service Commissions Law; Railroad Law; Rapid Transit.</i>) | | |

| RAILROADS—(Continued). | | SECTION | PAGE |
|---|--|----------------|-------------|
| along highways, obstruction..... | <i>Railroad L., § 21</i> | 21 | 427 |
| apportionment of assessment among school districts..... | <i>Tax L., § 40</i> | 40 | 497 |
| crossings, sign boards and flagmen..... | <i>Railroad L., § 53</i> | 53 | 428 |
| fences, failure to maintain..... | <i>Railroad L., § 52</i> | 52 | 427 |
| injuries to employees..... | <i>Railroad L., § 64</i> | 64 | 428 |
| loosening brakes or couplings on cars, punishment..... | <i>Pen. L., § 1433</i> | 1433 | 395 |
| payment of taxes to county treasurer..... | <i>Tax L., § 73</i> | 73 | 499 |
| reorganization of corporations..... | <i>Pub. Serv. Com. L., § 55-a</i> | 55-a | 425 |
| RAPID TRANSIT | | | |
| construction cost, expense of determining..... | <i>L. 1891, ch. 4, § 10, as am. by L. 1912, ch. 226</i> | | 433 |
| contracts for construction, equipment, maintenance and operation..... | <i>L. 1891, ch. 4, §§ 26, 27, 29, 33, 34, 38, as am. by L. 1912, ch. 226</i> | | 438 |
| franchise expirations, property to belong to city..... | <i>L. 1891, ch. 4, § 24, subd. 6, as am. by L. 1912, ch. 226</i> | | 437 |
| public service commission, general powers and duties..... | <i>L. 1891, ch. 4, § 4, as am. by L. 1912, ch. 226</i> | | 432 |
| routes for connections and extensions, determination..... | <i>L. 1891, ch. 4, § 24, subd. 1, as am. by L. 1912, ch. 226</i> | | 435 |
| RATE-MAKING ASSOCIATIONS | | | |
| business regulated..... | <i>Insur. L., § 241</i> | 241 | 280 |
| (See <i>Insurance Law</i> .) | | | |
| REAL PROPERTY | | | |
| misleading advertisements as to..... | <i>Pen. L., § 421</i> | 421 | 385 |
| REAL PROPERTY LAW | | | |
| ACKNOWLEDGMENTS | | | |
| Austria-Hungary, how made..... | 301, subd. 9 | 301 | 461 |
| form and sufficiency, decisions..... | 303 | | 461 |
| CEMETERIES | | | |
| acquisition of lands in certain counties..... | 451 | | 463 |
| CONVEYANCES | | | |
| decisions generally..... | 253, 259, 260, 263 | | 459 |
| recording, decisions..... | 291 | | 460 |
| DOWER | | | |
| election by widow, decisions..... | 201 | | 458 |
| widow's quarantine, decisions..... | 204 | | 458 |
| FUTURE ESTATES | | | |
| remainders, vested and contingent, decisions..... | 40 | | 455 |
| suspension of power of alienations, decisions..... | 42 | | 455 |
| MORTGAGES | | | |
| discharge, in counties in Greater New York..... | 322 | | 461 |
| procedure where mortgage is lost, etc..... | 322 | | 461 |
| TRUST ESTATES | | | |
| decisions..... | 92-113 | | 456 |
| REFEREES | | | |
| official, in first and second departments..... | <i>Judic. L., § 115</i> | 115 | 310 |
| compensation..... | <i>Judic. L., § 116</i> | 116 | 311 |
| stenographers' services..... | <i>Judic. L., § 116</i> | 116 | 311 |
| REGISTER OF DEEDS | | | |
| Bronx county; appointments..... | <i>L. 1912, ch. 548, § 3</i> | 3 | 143 |
| salary..... | <i>L. 1912, ch. 548, § 4</i> | 4 | 144 |
| RELIGIOUS CORPORATIONS LAW | | | |
| real property, sale, mortgage or lease..... | 12 | | 464 |
| cemetery lands, not to be sold..... | 12 | | 464 |
| conveyance to other church..... | 12 | | 464 |
| RENSSELAER COUNTY | | | |
| transfer tax, appraisers, etc..... | <i>Tax L., § 229</i> | 229 | 503 |
| RETIREMENT | | | |
| state hospital employees..... | <i>Insanity L., §§ 110-122</i> | 110-122 | 256 |
| teachers in state institutions..... | <i>Educ. L., § 1095</i> | 1095 | 178 |
| REVISION OF CODE | | | |
| board of statutory consolidation to report..... | <i>L. 1912, ch. 393</i> | 393 | 51 |
| RICHMOND COUNTY | | | |
| transfer tax, appraiser..... | <i>Tax L., § 229</i> | 229 | 503 |
| clerk, surrogate's office..... | <i>Tax L., § 234</i> | 234 | 505 |

INDEX TO LAWS.

637

| | SECTION | PAGE |
|---|--------------------------------------|------|
| ROCHESTER STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law</i> .) | | |
| ROME STATE CUSTODIAL ASYLUM | | |
| inmates, admission without commitment..... | <i>St. Char. L.</i> , § 95 | 468 |
| parole or leave of absence..... | <i>St. Char. L.</i> , § 95 | 468 |
| SAINT LAWRENCE STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law</i> .) | | |
| SARATOGA BATTLE MONUMENT | | |
| commission created | <i>L. 1912, ch. 489</i> , § 1 | 373 |
| organization; assistants | <i>L. 1912, ch. 489</i> , § 3 | 373 |
| dedication, when to take place..... | <i>L. 1912, ch. 489</i> , § 2 | 373 |
| expenditure of money; reports..... | <i>L. 1912, ch. 489</i> , § 4 | 373 |
| SAVINGS ASSOCIATIONS, CO-OPERATIVE | | |
| (See <i>Banking Law</i> .) | | |
| SAVINGS BANKS | | |
| (See <i>Banking Law</i> .) | | |
| SCAFFOLDING | | |
| for use of employees, liability of employers..... | <i>Labor L.</i> , § 18 | 322 |
| SCHOOL DISTRICTS | | |
| (See <i>Education Law</i> .) | | |
| apportionment of assessment of railroad, etc., corporations..... | <i>Tax L.</i> , § 40 | 497 |
| SCHOOLS | | |
| (See <i>Education Law</i> .) | | |
| SECOND CLASS CITIES LAW | | |
| BOARD OF CONTRACT AND SUPPLY | | |
| bids, right to reject..... | 120 | 467 |
| contracts for paving..... | 124 | 467 |
| lowest bidder; specifications..... | 120 | 467 |
| CONTRACTS AND EXPENDITURES | | |
| certain, prohibited | 79 | 466 |
| suppression of epidemic, expenditures..... | 79 | 466 |
| PUBLIC WORKS, COMMISSIONER | | |
| powers and duties..... | 91 | 466 |
| SEEDS | | |
| inspection, and sale regulated | <i>Agr. L.</i> , §§ 340, 341 | 15 |
| SEWERS | | |
| construction in towns | <i>Town L.</i> , § 230-a | 534 |
| villages, contracts with other municipalities..... | <i>Village L.</i> , § 276 | 542 |
| SHARES OF STOCK | | |
| issue without par value..... | <i>Stock Corp. L.</i> , §§ 19-23 | 478 |
| (See <i>Corporations; Stock Corporation Law</i> .) | | |
| SHELLFISH | | |
| (See <i>Conservation Law; Marine fisheries; Oysters</i> .) | | |
| conservation commission's general powers and duties relative to | <i>Conserv. L.</i> , § 301 | 119 |
| conservation law provisions..... | <i>Conserv. L.</i> , §§ 300-335 | 119 |
| defined | <i>Conserv. L.</i> , § 380, subd. 18 | 139 |
| SHERIFFS | | |
| Bronx county, election, term, salary, etc..... | <i>L. 1912, ch. 548</i> , 3 | 143 |
| game protectors, to have powers of..... | <i>Conserv. L.</i> , § 172 | 95 |
| hunting and trapping, license provisions, enforcement..... | <i>Conserv. L.</i> , § 185, subd. 10 | 100 |
| medical and hospital expenses when injured in line of duty, county may pay..... | <i>County L.</i> , § 250 | 159 |
| SIDE PATHS | | |
| improvement, board of supervisors to provide for...County L., § 12, subd. 28 | | 150 |
| SKUNKS | | |
| open season | <i>Conserv. L.</i> , § 199 | 104 |
| propagation and sale..... | <i>Conserv. L.</i> , § 200 | 104 |
| SMELT | | |
| open season, size, sale..... | <i>Conserv. L.</i> , § 241 | 111 |
| SNIFE AND OTHER SHORE BIRDS | | |
| open season, limit..... | <i>Conserv. L.</i> , § 216 | 107 |

| | SECTION | PAGE |
|--|----------------------------------|------|
| SOLDIERS, SAILORS AND MARINES | | |
| admission to soldiers' home at Bath..... | <i>Pub. Bldgs. L.</i> , § 64 | 410 |
| burial, payment of expense..... | <i>Poor L.</i> , § 84 | 405 |
| Relief Corps Home at Oxford, admission..... | <i>St. Char. L.</i> , § 255 | 469 |
| veterans, in civil service, leave of absence for Gettysburg anni- versary | <i>L. 1912, ch. 144</i> | 47 |
| SQUIRRELS | | |
| black and gray, open season and limit..... | <i>Conserv. L.</i> , § 195 | 103 |
| STARFISH | | |
| destruction when taken, no return to waters..... | <i>Conserv. L.</i> , § 320 | 127 |
| STATE CHARITIES LAW | | |
| ROME CUSTODIAL ASYLUM | | |
| admission of inmates, superintendent may permit..... | 95 | 468 |
| parole of inmates..... | 95 | 468 |
| WOMEN'S RELIEF CORPS HOME | | |
| admission of inmates..... | 255 | 469 |
| STATE FINANCE LAW | | |
| payments to state treasurer..... | 37 | 470 |
| separate contracts for heating, plumbing and ventilating..... | 60 | 471 |
| STATE FIRE MARSHAL | | |
| office created; powers and duties..... | <i>Insur. L.</i> , §§ 350-375 | 292 |
| STATE HOSPITAL COMMISSION | | |
| (See <i>Insanity Law</i> .) | | |
| STATE HOSPITALS FOR INSANE | | |
| enumerated | <i>Insanity L.</i> , § 40 | 236 |
| STATE LANDS | | |
| Dannemora and Altona, assessment..... | <i>Tax L.</i> , § 22 | 495 |
| STATE LAW | | |
| Connecticut boundary line..... | 2 | 472 |
| STATE PRISONERS | | |
| (See <i>Prison Law</i> .) | | |
| STATE REFORMATORIES | | |
| (See <i>Prison Law</i> .) | | |
| STATUTORY CONSOLIDATION, BOARD OF | | |
| revision of code, report as to..... | <i>L. 1912, ch. 393</i> | 51 |
| STEAM BOILERS | | |
| inspection by state fire marshal..... | <i>Insur. L.</i> , § 357 | 296 |
| STENOGRAPHERS | | |
| court, certified copy of minutes of examination..... | <i>Code Crim. Pro.</i> , § 221-b | 189 |
| court, copies of proceedings on payment of fees..... | <i>Judic. L.</i> , § 303 | 313 |
| (See <i>Judiciary Law</i> .) | | |
| STOCK CORPORATION LAW | | |
| BOOKS | | |
| examination, right of stockholders..... | 32 | 482 |
| stock, foreign corporations..... | 33 | 483 |
| CAPITAL STOCK | | |
| amount, where issued without value..... | 23 | 481 |
| increase or reduction of shares or capital..... | 22 | 481 |
| issuance without par or nominal value..... | 19 | 478 |
| certificate to authorize..... | 19 | 478 |
| commencement of business..... | 20 | 479 |
| debts authorized | 20 | 479 |
| directors, liability for debts..... | 20 | 480 |
| dividends, payment | 20 | 480 |
| taxation, organization | 21 | 480 |
| DIRECTORS | | |
| liability for unauthorized dividends..... | 28 | 482 |
| must be stockholders..... | 25 | 482 |
| STOCKHOLDERS | | |
| liabilities, actions to enforce..... | 56 | 483 |
| laborers, servants or employees..... | 57 | 484 |
| limitation; judgment obtained..... | 59 | 484 |
| prohibited transfers | 66 | 484 |
| STREET RAILROADS | | |
| construction in certain public places..... | <i>Railroad L.</i> , § 191 | 430 |

INDEX TO LAWS.

639

| | SECTION | PAGE |
|--|---|----------|
| STREET RAILROADS—(Continued). | | |
| rate of fare..... | <i>Railroad L.</i> , § 181 | 430 |
| use of streets; rate of speed..... | <i>Railroad L.</i> , § 178 | 429 |
| STURGEON | | |
| nets, size of mesh..... | <i>Conserv. L.</i> , §§ 278, 279 | 116 |
| open season, size, sale..... | <i>Conserv. L.</i> , § 238 | 110 |
| set and trap lines, use..... | <i>Conserv. L.</i> , § 254 | 113 |
| SUFFOLK COUNTY | | |
| assessment of lots..... | <i>Tax L.</i> , § 21-b | 495 |
| transfer tax, appraiser..... | <i>Tax L.</i> , § 229 | 503 |
| clerk, surrogate's office..... | <i>Tax L.</i> , § 234 | 505 |
| SUPERINTENDENTS OF HIGHWAYS | | |
| <i>(See Highway Law.)</i> | | |
| SUPERINTENDENTS OF THE POOR | | |
| <i>(See County Law; Insanity Law; Poor Law; State Charities Law.)</i> | | |
| commitment of insane persons on petition..... | <i>Insanity L.</i> , § 82 | 246 |
| relief of indigent insane..... | <i>Insanity L.</i> , §§ 87, 88 | 249 |
| hospitals, provide for treatment of indigent persons.... | <i>Poor L.</i> , § 30, subd. 2 | 404 |
| payment of moneys to county treasurer..... | <i>Poor L.</i> , § 3, subd. 14 | 404 |
| SUPERVISOR | | |
| <i>(See County Law; Tax Law; Town Law.)</i> | | |
| duties as superintendent of fires..... | <i>Town L.</i> , § 98, subd. 8 | 530 |
| SUPREME COURT | | |
| appellate division, first department, retirement of clerks, assistants, etc..... | <i>L.</i> 1911, ch. 855, § 1, as am. by <i>L.</i> 1912, ch. 486 | 485 |
| <i>(See Judiciary Law.)</i> | | |
| Bronx county, jurisdiction..... | <i>L.</i> 1912, ch. 548, § 9 | 146 |
| SURROGATES | | |
| assistants, for collection of transfer tax..... | <i>Tax L.</i> , § 234 | 504 |
| SURROGATE'S COURT | | |
| Bronx county created; jurisdiction..... | <i>L.</i> 1912, ch. 548, § 3 | 143 |
| salary of surrogate..... | <i>L.</i> 1912, ch. 548, § 4 | 144 |
| SYRACUSE COLLEGE OF FORESTRY | | |
| admission: fees and income.... | <i>L.</i> 1911, ch. 851, § 6, as am. by <i>L.</i> 1912, ch. 15 | 193 |
| trustees, appointment..... | <i>L.</i> 1911, ch. 851, § 3, as am. by <i>L.</i> 1912, ch. 15 | 193 |
| TAXES | | |
| direct, rate fixed..... | <i>L.</i> 1912, ch. 209 | 486 |
| equalization, acts of boards of supervisors legalized..... | <i>L.</i> 1912, ch. 20 | 485 |
| highways, levy legalized..... | <i>L.</i> 1912, ch. 64 | 486 |
| TAX LAW | | |
| APPORTIONMENT | | |
| valuation of railroad, etc., corporations among school districts | 40 | 497 |
| ASSESSMENT | | |
| ascertainment of facts by assessors..... | 20 | 492 |
| assessment-roll, preparation | 21 | 493 |
| parts and columns specified..... | 21 | 493 |
| certain lands in Suffolk county..... | 21-b | 495 |
| review by certiorari, decisions..... | 290 | 512 |
| state lands, Dannemora and Altona..... | 22 | 495 |
| COLLECTION OF TAXES | | |
| enforcement | 71 | 499 |
| payment by railroad, etc., corporations..... | 73 | 499 |
| CORPORATIONS | | |
| foreign, basis of license tax..... | 181 | 500 |
| franchise, lien of tax..... | 182 | 500 |
| DEFINITIONS | | |
| special franchise | 2 | 488 |
| EXEMPTIONS | | |
| forestry lands | 16, 17 | 489, 491 |
| household furniture and effects..... | 4, subd. 21 | 488 |
| lands maintained as wood lots..... | 17 | 491 |
| MORTGAGES | | |
| decisions respecting tax..... | 259-263 | 506 |
| SALE OF LANDS | | |
| comptroller's deed; breach of covenant..... | 131 | 499 |

TAX LAW—(Continued).

| | SECTION | PAGE |
|---|------------------------------------|------|
| SALE OF LANDS—(Continued). | | |
| notice to occupants..... | 134 | 499 |
| refund of purchase money..... | 156 | 499 |
| SPECIAL FRANCHISES | | |
| assessment; definitions | 43 | 498 |
| definition | 2 | 488 |
| STOCK TRANSFERS | | |
| amount of tax..... | 270 | 507 |
| civil penalties for failure to pay tax..... | 277 | 511 |
| collection of tax..... | 270 | 507 |
| decisions respecting tax..... | 270 | 508 |
| failure to pay, penalty | 272 | 509 |
| stamps, illegal use..... | 275 | 509 |
| state comptroller to collect tax..... | 276 | 510 |
| procedure for collection..... | 276 | 510 |
| recovery of civil penalties..... | 277 | 511 |
| TAXABLE TRANSFERS | | |
| appraisers, stenographers and clerks, appointment in certain counties | 229 | 503 |
| assistants of surrogates in certain counties..... | 234 | 504 |
| decisions affecting tax..... | 220 | 500 |
| exceptions and limitations..... | 221 | 502 |
| exemption of educational institutions..... | 221 | 502 |
| TAXPAYER'S ACTION | | |
| against municipal officers, right to maintain..... | <i>Gen. Mun. L., § 51</i> | 205 |
| TEACHERS' PENSIONS | | |
| (See <i>Education Law</i> .) | | |
| TELEGRAPH CORPORATIONS | | |
| apportionment of assessment among school districts..... | <i>Tax L., § 40</i> | 497 |
| TELEGRAPH CORPORATIONS | | |
| payment of taxes to county treasurer..... | <i>Tax L., § 73</i> | 499 |
| TELEGRAPH AND TELEPHONE CORPORATIONS | | |
| reorganization, powers of public service commissions..... | <i>Pub. Serv. Com. L., § 101-a</i> | 426 |
| TELEPHONE CORPORATIONS | | |
| apportionment of assessment among school districts..... | <i>Tax L., § 40</i> | 497 |
| payment of taxes to county treasurer..... | <i>Tax L., § 73</i> | 499 |
| TENEMENT HOUSE LAW | | |
| ALTERATION | | (|
| building altered becomes subject to law..... | 3 | 514 |
| increasing number of rooms, effect..... | 33 | 519 |
| CHIMNEYS AND FIRE PLACES | | |
| adequate, requirements | 78 | 526 |
| CLOSETS | | |
| under first story stairs..... | 28 | 518 |
| COURTS | | |
| outer, width regulated..... | 57, <i>subd. 1</i> | 522 |
| outer and inner, dimensions..... | 59 | 522 |
| DEFINITIONS | | |
| "height," how measured..... | 2, <i>subd. 12</i> | 514 |
| "shaft," includes what..... | 2, <i>subd. 4</i> | 514 |
| "tenement house" defined..... | 2, <i>subd. 1</i> | 514 |
| ELEVATORS | | |
| vestibules in fire proof tenements..... | 66-a | 525 |
| FIRE-ESCAPES | | |
| method of construction..... | 16 | 514 |
| tower, when permitted..... | 22-a | 518 |
| FIRE-STOPS | | |
| when constructed | 30 | 518 |
| HEIGHT | | |
| limitation as to..... | 51 | 520 |
| measurement, how made..... | 2, <i>subd. 12</i> | 514 |
| LOTS | | |
| percentage occupied by buildings..... | 70 | 525 |
| PARTITIONS | | |
| non-fireproof buildings, construction..... | 25 | 518 |

INDEX TO LAWS.

641

TENEMENT HOUSE LAW—(Continued).

| | SECTION | PAGE |
|---|--------------------------|------|
| PLASTERING | | |
| behind wainscoting | 37 | 519 |
| ROOMS AND WINDOWS | | |
| area of windows..... | 63 | 523 |
| lighting and ventilation..... | 62 | 523 |
| public halls, windows in..... | 66 | 524 |
| size of rooms..... | 64 | 524 |
| windows for stair halls, size..... | 68 | 525 |
| SHAFTS | | |
| definition | 2, subd. 4 | 514 |
| how to be constructed..... | 36 | 519 |
| light, new, in existing buildings..... | 75 | 525 |
| STAIRS AND HALLS | | |
| accessibility of apartments..... | 18 | 516 |
| cellar and basement stairs, fire proof buildings..... | 27 | 518 |
| construction of stairs..... | 21 | 516 |
| halls, stair, how built..... | 22 | 516 |
| fireproof buildings | 22 | 516 |
| liability for failure to light; decisions..... | 76 | 526 |
| non-fireproof buildings | 22 | 517 |
| public, windows in..... | 66 | 524 |
| windows for stair..... | 68 | 525 |
| WATER CLOSETS AND BATH ROOMS | | |
| accommodations provided | 93 | 527 |
| vent flues from..... | 79 | 527 |
| WOODEN BUILDINGS | | |
| prohibited on same lot as tenement house..... | 38 | 520 |
| YARDS | | |
| lots running from street to street..... | 55 | 521 |
| required around tenements..... | 52 | 521 |
| TOWN CLERK | | |
| (See <i>Town Law</i> .) | | |
| marriage licenses, issuance..... | <i>Dom. Rel. L.</i> , 14 | 164 |
| duty in respect to..... | <i>Dom. Rel. L.</i> , 15 | 166 |
| records of statements, etc., to be kept..... | <i>Dom. Rel. L.</i> , 19 | 168 |
| undertaking, form and approval..... | <i>Town L.</i> , 92-a | 530 |
| TOWN LAW | | |
| BORROWING MONEY | | |
| payment of claims audited..... | 141 | 533 |
| FIRE COMPANIES | | |
| appointment by town board..... | 310 | 537 |
| maintenance, appropriation for..... | 313 | 537 |
| assessment of expense..... | 314 | 538 |
| ordinances regulating | 315 | 538 |
| FIRES | | |
| forest rangers, compensation..... | 98, subd. 8 | 530 |
| MEMORIAL DAY | | |
| appropriation for observance..... | 136-a | 532 |
| additional, town meeting may provide..... | 136-a | 532 |
| OFFICERS | | |
| compensation | 85 | 529 |
| eligibility | 81 | 529 |
| term of office..... | 82 | 529 |
| OVERSEERS OF THE POOR | | |
| compensation in certain towns..... | 112 | 531 |
| election or appointment..... | 112 | 531 |
| number determined at town meeting..... | 112 | 531 |
| official undertaking | 112 | 531 |
| SEWER SYSTEM | | |
| construction by town board..... | 230-a | 534 |
| petition, contents | 230-a | 534 |
| extension, upon petition of taxpayers..... | 230-a | 535 |
| SUPERVISOR | | |
| superintendent of fires..... | 98, subd. 8 | 530 |
| TOWN AUDITORS | | |
| meetings and compensation..... | 154 | 533 |
| SUP. III—41 | | |

TOWN LAW—(Continued).

| | SECTION | PAGE |
|--|---------|------|
| TOWN BOARD | | |
| borrowing money to pay claims audited..... | 141 | 533 |
| construction of sewer system..... | 230-a | 534 |
| TOWN CLERK | | |
| undertaking, form and approval..... | 92-a | 530 |
| TOWN MEETINGS | | |
| date and powers; decisions..... | 40, 43 | 529 |
| qualifications of electors..... | 53 | 529 |
| WATER SUPPLY DISTRICT | | |
| bonds to refund existing debt..... | 288-a | 536 |
| enlarging existing system..... | 299 | 536 |

TOWNS

| | | |
|--|----------------------|-----|
| (See <i>Town Law; General Municipal Law.</i>) | | |
| forest lands, acquisition and development..... | Gen. Mun. L., § 72-a | 206 |
| highways and bridges. (See <i>Highway Law.</i>) | | |

TRANSPORTATION CORPORATIONS LAW

| | | |
|--------------------------------------|-----|-----|
| GAS AND ELECTRIC LIGHT | | |
| supplied on application..... | 62 | 539 |
| TELEPHONE | | |
| appropriation of lines by state..... | 102 | 539 |
| erection of poles on highways..... | 102 | 539 |

TREES

| | | |
|---|-----------------------|-----|
| conservation department, appropriations or purchases of lands, | | |
| owners may reserve timber..... | Conserv. L., §§ 74-78 | 69 |
| nurseries, establishment and use..... | Conserv. L., § 62 | 64 |
| evergreen trees, cutting in certain towns..... | Conserv. L., § 80 | 76 |
| forestry, tax exemptions or reductions, lands of 100 acres or less, | | |
| planting and underplanting..... | Tax L., § 16 | 489 |
| lands of 5 acres and upwards, waste, denuded or wild, plant- | | |
| ing and underplanting..... | Conserv. L., § 89 | 73 |
| wood lots of 50 acres or less..... | Tax L., § 17 | 491 |

TRESPASS

| | | |
|---|-----------------------------|----|
| private lands, forest fire fighting, action not to lie..... | Conserv. L., § 92, subd. 3 | 77 |
| state lands, annual reports of cases..... | Conserv. L., § 12 | 54 |
| arrests and actions..... | Conserv. L., § 63 | 65 |
| injunctions against..... | Conserv. L., § 64, subd. 3 | 66 |
| purchases by state, adjustment of claims..... | Conserv. L., § 80 | 71 |
| term defined..... | Conserv. L., § 109, subd. 4 | 86 |

TRIAL, NOTICE OF

| | | |
|--|-----------------------|-----|
| service, and filing note of issue..... | Code Civ. Pro., § 977 | 380 |
| entry of cause on calendar..... | Code Civ. Pro., § 977 | 380 |

TROUT

| | | |
|---|-----------------------------------|-----|
| defined..... | Conserv. L., § 380, subds. 13, 14 | 139 |
| lake trout, nets, size of mesh..... | Conserv. L., § 272, subd. 1 | 115 |
| open season, limit..... | Conserv. L., §§ 232-235 | 109 |
| private hatcheries, provisions governing..... | Conserv. L., § 371 | 134 |
| spawning not to be disturbed..... | Conserv. L., 243 | 111 |
| stocking private waters with, regulations..... | Conserv. L., 242 | 111 |
| waters inhabited by, certain fish not to be put into..... | Conserv. L., 250 | 113 |
| eel weirs not to be used..... | Conserv. L., 256 | 113 |
| minnows not to be taken with net, trap or seine..... | Conserv. L., 230 | 109 |
| nets, use forbidden..... | Conserv. L., § 275 | 115 |
| no fishing through ice..... | Conserv. L., §§ 252, 253 | 113 |

TRUST COMPANY

| | | |
|----------------------------|-----------------|----|
| lawful money reserve..... | Bank. L., § 198 | 29 |
| (See <i>Banking Law.</i>) | | |

TUBERCULOSIS HOSPITAL

| | | |
|--|--------------------------|-----|
| county, admission of patients..... | County L., § 48, subd. 5 | 153 |
| recovery of cost of maintenance of patients..... | County L., § 49-a | 153 |

TUNNELS

| | | |
|---|-------------------|-----|
| compressed air, air pipes or lines, at least two required.... | Labor L., § 134-d | 333 |
| decompression rates..... | Labor L., 134-a | 330 |
| electric lights, supply wires..... | Labor L., § 134-e | 333 |
| instruments for showing pressure, attachment and caretaker | | |
| ..... | Labor L., § 134-a | 330 |

INDEX TO LAWS.

643

| | | |
|--|----------------------------------|-------------|
| TUNNELS— (<i>Continued</i>). | SECTION | PAGE |
| medical officers, attendance and duties..... | <i>Labor L.</i> , § 134-b | 332 |
| nurses, medical locks to be in charge of..... | <i>Labor L.</i> , § 134-b | 332 |
| USURY | | |
| application of law against..... | <i>Gen. Bus. L.</i> , § 371 | 198 |
| UTICA STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| VACCINATION | | |
| of school children, failure of parent to permit..... | <i>Pub. Health L.</i> , § 310 | 418 |
| VESSELS | | |
| liens on; application of law..... | <i>Lien L.</i> , § 80 | 348 |
| VETERINARY MEDICINE | | |
| licenses, admission to examinations..... | <i>Pub. Health L.</i> , § 219 | 413 |
| issuance; registration | <i>Pub. Health L.</i> , § 219 | 413 |
| VILLAGE LAW | | |
| BOUNDARIES | | |
| extension by annexation of territory..... | 348-a | 542 |
| disputed, establishment | 359 | 542 |
| LIGHTING SYSTEM | | |
| control by commissioners..... | 244 | 541 |
| extension outside of village..... | 244 | 541 |
| SEWER SYSTEM | | |
| contracts with other municipalities..... | 276 | 542 |
| STREETS | | |
| improvement, notice to railroad company..... | 146 | 540 |
| sprinkling, with water or oil..... | 165 | 541 |
| VILLAGES | | |
| (See <i>Village Law.</i>) | | |
| forest lands, acquisition and development..... | <i>Gen. Mun. L.</i> , § 72-a | 206 |
| state and county highways..... | <i>High. L.</i> , § 137 | 216 |
| VINEGAR | | |
| definition of cider vinegar..... | <i>Agr. L.</i> , § 70 | 10 |
| of adulterated vinegar..... | <i>Agr. L.</i> , § 70 | 10 |
| WATER SYSTEM | | |
| towns, refunding indebtedness..... | <i>Town L.</i> , § 288-a | 536 |
| enlarging existing system..... | <i>Town L.</i> , § 299 | 536 |
| WEIGHTS AND MEASURES | | |
| containers, regulations as to..... | <i>Gen. Bus. L.</i> , §§ 16-a-18 | 194 |
| superintendent of, duties..... | <i>Gen. Bus. L.</i> , § 18 | 195 |
| WESTCHESTER COUNTY | | |
| county judge and surrogate, salaries..... | <i>County L.</i> , § 232 | 158 |
| transfer tax, appraisers, etc..... | <i>Tax L.</i> , § 229 | 503 |
| assistants, etc., surrogates'..... | <i>Tax L.</i> , § 234 | 505 |
| WILLARD STATE HOSPITAL | | |
| continued | <i>Insanity L.</i> , § 40 | 236 |
| (See <i>Insanity Law.</i>) | | |
| WOMEN | | |
| hours of labor in factories..... | <i>Labor L.</i> , § 77 | 325 |
| (See <i>Labor Law.</i>) | | |
| not to sell or serve liquor..... | <i>Liquor Tax L.</i> , § 30 | 353 |

62 887
9 4.2

1



